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Executive Orders

EXECUTIVE ORDER 97-43

Community/Technical College and Adult Education Task Force

WHEREAS: the State of Louisiana recognizes the importance of having a flexible and responsive community/technical college and adult education system that is focused on providing an effective labor force adapted to the foreseeable needs of the businesses and industries in the state;

WHEREAS: the existing disparity between business needs and labor skills will broaden unless the community/technical college and adult education system and workforce development programs within the State of Louisiana adapt to the foreseeable and projected skilled labor and educational needs of the businesses and industries within the state;

WHEREAS: the State of Louisiana would benefit from an evaluation of its community/technical college and adult education system, which is currently governed by several different boards, to determine the ability of the system to effectively respond to Louisiana's future skilled labor needs and to determine whether operational and/or structural changes should be implemented to enable the state's skilled labor force to meet the foreseeable and projected needs of the state's businesses and industries; and

WHEREAS: the interests of the citizens of the State of Louisiana can be best served by the creation of a task force on community/technical college and adult education, composed of representatives of business, labor, education, the executive branch, and the legislature, that is focused on the evaluation of Louisiana's future workforce needs and recommending the strategies and structures that are necessary to strengthen Louisiana's community/technical college and adult education system so that the state will have a workforce that will be more competitive in global markets;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Community/Technical College and Adult Education Task Force (hereafter "task force") is established within the Executive Department, Office of the Governor.

SECTION 2: The duties of the task force shall include, but are not limited to, the following:

A. analyzing the economic and demographic trends which affect the State of Louisiana, and evaluating the impact of these trends upon the economic competitiveness of the businesses and industries within the state and the ability of Louisiana's skilled labor force to meet the foreseeable and projected needs of those businesses and industries;

B. assessing the strengths and weaknesses of the State of Louisiana's community/technical college and adult

education system in order to develop strategies necessary for present and future businesses and industries within the state to have a skilled workforce that enables them to compete successfully in global markets;

C. examining the efforts of other states in responding to the economic and demographic conditions or challenges faced by the businesses and industries in those states which are similar to the conditions or challenges faced by the businesses and industries in Louisiana, particularly with regard to those states' community/technical college and adult education strategies;

D. identifying operational strategies and/or governance structures which would improve the performance of Louisiana's community/technical college and adult education system to enable it to better respond to the foreseeable and projected skilled labor needs of Louisiana's present and future businesses and industries; and

E. recommending legislation which would improve Louisiana's ability to respond to and meet the foreseeable and projected skilled labor needs of the state's present and future businesses and industries.

SECTION 3: The task force shall be composed of 28 members appointed by, and serving at, the pleasure of the Governor. The membership of the task force shall be selected as follows:

A. the chief of staff, Office of the Governor, or the chief of staff's designee;

B. the chairs of the Senate Committees on Labor and Industrial Relations and on Education, or the chairs' designees;

C. two additional members of the Senate to be nominated by the president of the Senate;

D. the chairs of the House Committees on Labor and Industrial Relations and on Education, or the chairs' designees;

E. two additional members of the House of Representatives to be nominated by the speaker of the House of Representatives;

F. the secretary of the Department of Labor, or the secretary's designee;

G. the secretary of the Department of Economic Development, or the secretary's designee;

H. the superintendent of Education, or the superintendent's designee;

I. the commissioner of Higher Education, or the commissioner's designee;

J. three members of the Board of Elementary and Secondary Education, or the members' designees;

K. three representatives of higher education;

L. two representatives of organized labor; and

M. seven representatives of business and industry.

SECTION 4: The Governor shall select the chair and vice-chair of the task force from its membership. The membership of the task force shall elect all other officers.

SECTION 5: The task force shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 6: Support staff for the task force and facilities for its meetings shall be provided by the Office of the Governor and outside sources as necessary.

SECTION 7: The task force shall submit to the Governor its report on the issues described in Section 2, no later than February 15, 1998.

SECTION 8: Task force members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, members who are not an employee of the State of Louisiana or one of its political subdivisions, or an elected official, may receive reimbursement from the Office of the Governor or actual travel expenses incurred, in accordance with state guidelines and procedures, and upon the approval of the commissioner of Administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the task force in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge on this 24th day of October, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9711#072

EXECUTIVE ORDER MJF 97-44

State Employees Group Benefits Program Study Commission

WHEREAS: it is the responsibility of government, not only to provide a benefits program for its employees that includes a quality health insurance product, but also to periodically review and improve the governance, professional management, and accountability of that benefits program;

WHEREAS: to fulfill this duty, the State Employee Group Benefits Program (hereafter "SEGBP") was created to provide affordable health care to its members, who are the employees and retirees of the State of Louisiana;

WHEREAS: members of the SEGBP have raised a number of concerns regarding the implementation of the SEGBP health care program that should be heard in a public forum and then thoroughly reviewed, including premium increases, reductions in the number of available health care providers, and the manner in which claims are handled; and

WHEREAS: the interests of the members of the SEGBP can be best served by the creation of a commission, composed of members of the legislature, the executive branch, the SEGBP, and the health care community to study the issues raised by the SEGBP members and recommend appropriate solutions to resolve their concerns;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested through the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The State Employees Group Benefits Program Study Commission (hereafter "commission") is created and established within the Executive Department, Office of the Governor.

SECTION 2: The duties and functions of the commission shall include, but are not limited to, the following:

A. analyzing the SEGBP program; examining options for affordable health care from a variety of health care providers; examining industry standards for acceptable claim handling practices; examining industry standards for the governance, professional management and structure of a state health care program; and examining the benefits packages, the options, and the cost structure of the health care programs of other states;

B. studying the feasibility of improving the SEGBP through privatization; by providing legislative contractual review and oversight; and/or through rules and/or legislation designed to ensure that the SEGBP provides quality and affordable services to its members; and

C. conducting public hearings to receive input from SEGBP members, stakeholders and others that are impacted or affected by the SEGBP.

SECTION 3: The commission shall submit a comprehensive written report to the Governor by February 1, 1998, which addresses the issues set forth in Section 2.

SECTION 4: The commission shall be composed of 29 members who shall be appointed by and serve at the pleasure of the Governor. The members shall be selected as follows:

A. the chief of staff, or the chief of staff's designee;

B. the commissioner of Administration, or the commissioner's designee;

C. the commissioner of Insurance, or the commissioner's designee;

D. the secretary of the Department of Health and Hospitals, or the secretary's designee;

E. the legislative auditor, or the legislative auditor's designee;

F. one director of human resources management from a state college or university;

G. three members of the Louisiana House of Representatives;

H. three members of the Louisiana Senate;

I. one retired state employee who is a member of the SEGBP;

J. one current state employee who is a member of the SEGBP;

- K. one current SEGBP board member;
- L. one representative of health insurance providers;
- M. one representative of health care providers;
- N. one representative of the Louisiana Managed Healthcare Association, nominated by the association;
- O. one health industry business representative;
- P. one private corporation human resource representative;
- Q. two physicians;
- R. one representative of the AFL-CIO; and
- S. six at-large members.

SECTION 5: The Governor shall appoint the chair from its membership. All other officers shall be elected by the commission.

SECTION 6: The commission shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 7: A simple majority of the members of the commission shall constitute a quorum for the transaction of business. All actions of the commission shall require a majority vote of the members of the commission.

SECTION 8: Commission members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, commission members who are not

employed by the state or an elected official may receive reimbursement for actual travel expenses, in accordance with state guidelines and procedures, upon the approval of the commissioner of Administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until March 31, 1998, or until amended, modified, terminated, or rescinded by the Governor.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 24th day of October, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9711#008

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Regional Initiatives Program (LAC 13:I:Chapter 70)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 51:2341, the Department of Economic Development, Office of the Secretary hereby finds that emergency action is deemed necessary for the timely implementation of funding grants for economic development related to regional economic development marketing efforts under the provisions of the Regional Initiatives Program.

This emergency rule is effective November 10, 1997, and shall remain in effect for 120 days or until adoption of the rule, whichever occurs first.

Title 13

ECONOMIC DEVELOPMENT

Part I. Commerce and Industry

Subpart 3. Financial Incentives

Chapter 70. Regional Initiatives Program

§7001. Purpose

The purpose of the program is to stimulate regional economic development efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths to overcome their common deficits. The program serves to help create a "spirit of regional cooperation."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7003. Definitions

Applicant—the entity requesting financial assistance from DED under this program.

Award—grant funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

DED—Louisiana Department of Economic Development.

Operating Costs—ongoing administrative, salary and travel expenses of the organization(s) applying for program funds.

Program—the Regional Initiatives Program.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7005. General Principles

The following principles will direct the administration of the Regional Initiatives Program:

1. awards should be considered to be one time only funding to achieve a specific goal for a regional (multiparish) economic development organization or coalition of organizations;

2. grant proposals must delineate clearly what is proposed and what is to be achieved by the award;

3. awards are not for the purpose of replacing existing costs, creating new, additional organizations, paying salaries, construction of facilities or acquisition of equipment;

4. projects to be funded must augment the Louisiana Economic Development Council's plan and the objectives and strategies of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7007. Eligibility

An eligible applicant for the grant award can include, but is not limited to, one of the following:

1. an existing regional economic development organization;

2. local chambers of commerce;

3. local economic development organizations;

4. multiparish organizations funded by local governing authorities and the federal government with an agreement signed by parish heads of government authorizing the group to apply for funds under the Regional Initiatives Program;

5. consortium of local economic development organizations as evidenced by a written agreement to enter into a proposal for the purposes of the Regional Initiatives Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7009. Criteria

A. Preference will be given to projects that are regional (multiparish) in scope.

B. Projects must have a positive economic impact on at least an entire parish.

C. Preference will be given to projects that enhance, expand or are intended to foster cooperation among both public and private development entities on a regional basis.

D. Resolutions must be provided that the proposed project has the support of the parish government and the prevailing economic development organization(s), whether public or private.

E. Preference will be given to rural areas and to proposals from organizations not already receiving economic development funds from the state.

F. No DED award funds can be used to fund ongoing operating costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7011. Application Procedure

The applicant must submit an application on a form provided by DED which shall contain, but not be limited to, the following:

1. a narrative proposal (maximum of five pages) that states the objectives and details of the project, what is to be accomplished, the duration of the project, how the proposed project will have a positive economic impact on the parish or region and how the proposed effort will be continued beyond the funding requested;
2. quantifiable objectives and deliverables for the project and plans to measure the effectiveness of the project according to those objectives and deliverables;
3. a detailed budget for the project including sources of funds and letters of commitment from the funding sources as well as written commitment of the 25 percent match to be used for the project;
4. résumé(s) of consultants involved with the project;
5. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7013. Submission and Review Procedure

A. Applicants must submit their completed application and proposal to the secretary of DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and region;
2. determine whether the project's funding requirements are best met by the proposed award;
3. validate the information presented;
4. determine the overall feasibility of the applicant's plan.

B. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary. If the secretary finds the application complies with the requirements of this program, he may approve the application for funding.

1. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

2. The secretary will issue a letter of commitment to the applicant within five working days of the application review and approval.

3. The final 25 percent of the award amount will not be paid until DED staff reviews the deliverables of the grant agreement to assure that all work has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7015. General Award Provisions

A. Award Agreement. A grant agreement will be executed between DED and the awardee. The agreement will specify

the performance objectives and deliverables expected of the awardee and the compliance requirements to be enforced in exchange for state assistance including, but not limited to, time lines for program completion.

B. Use of Funds

1. Any salary of the applicant related to the project is to be funded through the applicant's in-kind match.

2. Project costs ineligible for award funds include, but are not limited to:

- a. ongoing operating costs;
- b. furniture, fixtures, computers, transportation equipment, rolling stock or equipment.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed 75 percent of the total project cost.

2. The applicant shall provide at least 25 percent of the total cost; 12½ percent of the total project cost may be in-kind. For the purposes of this program, in-kind is the use, as a match, of the awardee's own resources to accomplish the goals of the project being funded.

3. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Upon notification of the award by the secretary, the awardee can begin spending funds on the project.

2. Award funds will be available to the awardee upon execution of a grant agreement.

3. Award funds will not be available for disbursement until:

- a. DED receives signed commitments by the project's other financing sources (public and private);
- b. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. The awardee shall be required to submit progress reports, as specified in the award agreement, describing the progress toward the performance objectives specified in the award agreement.

2. In the event an awardee fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, to modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event an awardee knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

Kevin P. Reilly
Secretary

9711#039

DECLARATION OF EMERGENCY

**Department of Economic Development
Office of the Secretary
Division of Economically Disadvantaged
Business Development**

**Economically Disadvantaged Business
Development Program and Small Business
Bonding Program (LAC 19:II.Chapters 1 and 9)**

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development hereby amends and enacts rules pertaining to direct bonding assistance for economically disadvantaged businesses. The secretary of the Department of Economic Development is exercising the emergency provision to publish these rules because of a recognized immediate need to provide small economically disadvantaged businesses with direct bonding assistance.

Without these emergency rules, the public welfare is likely to be harmed as a result of likely disruptions in the effective growth and development of the economically disadvantaged businesses. Such developmental disruption would result in lower market productivity, diminished job creation and increased risk of higher unemployment. These emergency rules are intended to mitigate the disruptions described above. These emergency rules are effective November 20, 1997, and will remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

Title 19

CORPORATIONS AND BUSINESS

**Part II. Economically Disadvantaged Business
Development Program**

Chapter 1. General Provisions

§105. Definitions

When used in these regulations, the following terms shall have meanings as set forth below:

* * *

Economically Disadvantaged Person—a citizen of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

RFP—Request for Proposal.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:

§107. Eligibility Requirements for Certification

A. - B. ...

1. Citizenship. The person is a citizen of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. Each individual owner's personal net worth may not exceed \$150,000.

4. Income. Each individual owner must submit personal federal income tax returns for the past three years.

C. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751, 1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A.1. - 6.d. ...

7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:

§903. Direct Bonding Assistance

A. Direct Bonding Assistance. All certified economically disadvantaged construction businesses that have been accredited by the LCAI and all other certified economically disadvantaged businesses (nonconstruction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. All obligations whether contractual or financial will require the approval of the undersecretary.

B. Application Process

1. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by agent to the manager of the Bonding Assistance Program (BAP) and surety coordinator.

2. Manager of BAP or designee will:

a. determine and document that business is eligible to participate in program;

b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;

c. determine worthiness of the project based on advice and input from surety coordinator and management construction/risk management company; and

d. make recommendation to executive director as required pertaining to specific project.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/Letters of Credit (LC) to a participating surety where the administration finds any of the following:

- i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;
- ii. imprudent underwriting standards;
- iii. excessive losses (as compared to other participating sureties);
- iv. failure of a surety to consent to BAP audit;
- v. evidence of discriminatory practices; and
- vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety which has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the secretary of the Department of Economic Development, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the executive director's decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§905. Calculation of Guarantee Fee Deduction

A. Upon the contractor obtaining the RFP or contract for which BAP is guaranteeing a bid, payment or performance bond, the surety shall pay BAP a portion of the bond fee paid by the contractor.

1. The surety shall pay BAP a bond guarantee fee not to exceed 2 percent of the bond guarantee or LC.

2. BAP will deem acceptable bond premium charges which are:

a. authorized by the state insurance department rules or by applicable statutes; and

b. a minimum bond premium regardless of the contract price, if this minimum charge does not exceed \$250 and has been authorized by the appropriate state insurance department.

B. BAP will not recommend approval of an application for a bond guarantee where the surety makes any charge above the standard premium for the bond, except where other services are performed for the contractor and the additional charge or fee is permitted by the appropriate state insurance department.

C. BAP will not approve placement or finder's fees, fees for the use or attempted use of influence in obtaining or trying to obtain a surety bond guarantee or any part thereof. Agents

and brokers shall be compensated by surety companies for their efforts through the commission system, based upon fees charged to the applicant contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§907. Management Construction/Risk Management Company

A. Surety shall require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;

2. job cost breakdown and bid preparation assistance;

3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;

4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;

5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§909. Underwriting a BAP Guaranteed Bond

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the economically disadvantaged business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

1. Bonds

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and

performance bonds when the actual contract price exceeds the original bid and the higher amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Generally bid, performance, and payment bonds listed in the Contract Bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

3. Ineligible Bond Situations and Exceptions

a. If the contracted work is already underway, no guarantee will be issued unless the executive director consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

i. evidence from the contractor that the surety bond requirement was contained in the original job contract;

ii. adequate documentation as to why a surety bond was not previously secured and is now being required;

iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the economically disadvantaged business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the economically disadvantaged business' experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted

on an individual project basis at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

a. The *guarantee agreement* is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder; and

vii. the surety shall pay BAP a portion of the bond premium in accordance with BAP rules.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of receipt of status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ration and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the executive director's exercise of

the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

2. **Reinsurance Agreement.** In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

3. **Default**

a. **Notice of Default.** Ordinarily, BAP first is notified by the surety that a particular contractor is in trouble. Where BAP receives information from other sources indicating a contractor is in trouble, the information is to be relayed to the surety for its information and appropriate action.

b. **Default Claims, Indemnity Pursuit, and Settlement**

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the executive director and undersecretary relative to BAP's guarantee. The executive director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is \$500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file. The surety shall strongly consider the use of a collection agency versus attorneys on all indemnity actions, if it appears feasible and economically beneficial.

iv. In those situations where BAP's share is over \$2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to

assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. **Reinstatement.** A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§913. Audits

At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the secretary of the Department of Economic Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the executive director's written issuance of notice that no further guarantees will be issued. Otherwise the executive director's decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§915. Ancillary Authority

The executive director, with the approval of the undersecretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

Henry Stamper
Executive Director

9711#017

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

**Public Contracts—Closed Specifications
for Certain Products (LAC 34:III.901)**

In accordance with R.S. 49:953(B) and R.S. 38:2290(B), the Office of Facility Planning and Control adopts the following emergency rule governing the closing of specifications for products that are necessary to expand or extend existing systems but for which a person or group of persons possesses the right to exclusive distribution. This emergency rule is being adopted in direct compliance with Act 678 of the 1997 Regular Session.

Under current purchasing procedures, products for the systems listed in the rule must be purchased separately from the construction contract and turned over to the contractor for installation. This causes a risk of improper installation and reduces the contractor's responsibility for the proper functioning of the system. The emergency rule will make it possible to include the products in the construction contract and improve the quality of installation and obtain a single source of responsibility.

This emergency rule is effective upon publication in the *Louisiana Register* and remains in effect for 120 days or until a final rule takes effect through the normal rulemaking process, whichever occurs first.

Adoption of this rule on an emergency basis is necessary in order to proceed immediately with the bidding of currently funded and designed sprinkler system projects which are required by Act 422 to be completed prior to January 1999. These systems require monitoring equipment that will electronically match the monitoring equipment of the existing fire alarm systems and will benefit substantially from the adoption of this rule. To delay bidding of these projects until this rule is adopted through the normal rulemaking process would jeopardize the timely completion of this work.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 9. Public Contracts

§901. Closed Specifications for Certain Products

A. This rule applies to the closing of specifications to products that are necessary to expand or match products in existing systems but for which a person or group of persons possesses the right to exclusive distribution.

B. A closed specification may be submitted and authorized where a person or group of persons possesses the right to exclusive distribution of the specified product when that product is required to expand or extend an existing system at a facility or site if that product is one of the systems listed in §901.B.1-11, or a component of one of them, and the approving authority has determined that all products other than the one specified would detract from the utility of the

system; and all other applicable requirements of R.S. 38:2290-2296 have been met:

1. energy management systems;
2. chillers when necessary for refrigerant conversion;
3. fire alarm systems;
4. electronic security systems;
5. elevators;
6. nurse call systems;
7. medical gas systems;
8. stage lighting systems;
9. sound systems;
10. clock systems;
11. brick and stone.

C. It is the responsibility of the approving authority to verify that the product for which the specification is closed is the only acceptable product and to comply with all applicable requirements of R.S. 38:2290-2296.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953(B) and R.S. 38:2290(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 24:

Roger Magendie
Director

9711#035

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
State Land Office**

Wax Lake Waterfowl Hunting Season—1997-1998

The Division of Administration, State Land Office has adopted the following emergency rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., which emergency rule is effective November 1, 1997 and remains in effect for 120 days.

Emergency adoption is necessary because of a dispute between the State of Louisiana and Miami Corporation over the ownership of water bottoms and accretion areas generally between the north end of Wax Lake and the mouth of Little Wax Bayou. Miami Corporation has previously granted hunting leases to various parties in this area; and the State previously posted signs in this area evidencing the State's claims, leading some members of the public to assume that the area was open to unlimited hunting and other access, including the right to construct permanent hunting blinds in the area. Problems exist with enforcement of trespass laws in that portion of the Wax Lake Area claimed by Miami Corporation and the State during duck hunting season; therefore, both Miami Corporation and the State are united in their efforts to avoid any confrontation among armed hunters in this area and deem it advisable to create a uniform set of rules for use of the area during the opening hunting season.

Emergency Rule

Effective November 1, 1997 and thereafter, the State Land Office adopts the following rules to govern use of the area of Wax Lake claimed by the State (which has been marked on the ground by State Land signs on perimeter trees) for hunting during the duration of the 1997-1998 waterfowl hunting season:

1. For purposes of these regulations, "Wax Lake Area" shall include lands and water bottoms within Sections 34, 35, 44, and 45, Township 16 South, Range 10 East, St. Mary Parish, said area generally lying between the north limit of Wax Lake and the mouth of Little Wax Bayou. The lands and water bottoms within the Wax Lake Area are subject to competing claims of the State and private landowners.

2. No one shall use marsh buggies within the Wax Lake Area. Air boats shall be allowed within the channel of Wax Lake Outlet only.

3. Certain improvements have been placed on the area by parties claiming through private landowners. Pending resolution of the title disputes between the State and those landowners, those improvements may remain in place, and any new permanent improvements shall be spaced a minimum of 500 feet from any existing or newly constructed improvements. All blinds, stands, or other improvements placed on the lands or water bottoms for use in hunting shall be removed upon termination of the legal hunting seasons. Other than such temporary hunting blinds as may be constructed for personal use, no party shall construct any buildings, levees, dams, fences, or other structures or facilities on the lands or water bottoms within the Wax Lake Area, nor dredge or dig any additional canals, ditches, or ponds thereon or otherwise change or alter the premises in any manner.

4. No member of the public is allowed to "stake a claim" to any particular location within areas owned or claimed by the State of Louisiana for any purpose. Construction of permanent blinds shall not give such party any right to exclude others.

Mark C. Drennen
Commissioner

9711#005

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

**Disproportionate Share
Hospital Payment Methodologies**

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act. This emergency rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum

period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

Disproportionate Share Hospital (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), which amended §1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal legislation and to avoid a budget deficit in the medical assistance program, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under the methodology, public state-owned hospitals received DSH payments equal to 100 percent of the hospital's net uncompensated cost, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

Effective March 20, 1997, the department adopted an emergency rule pursuant to Act Number 17 (House Bill Number 1) of the 1996 Legislative Session that provided for separate treatment of disproportionate share funds for uncompensated cost in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals.

The following emergency rule implements Act Number 1485 of the 1997 Legislative Session, which provides that all rural hospitals meeting the requirements of Act 1485 are to receive maximum disproportionate share funding in amounts appropriated by the legislation.

Failure to adopt this emergency rule on an emergency basis could result in unavailability of local hospital services for Medicaid recipients in areas served by these rural hospitals, and would cause imminent peril to the public health, safety, or welfare of affected Medicaid recipients. It is estimated that the federal expenditure will be \$13,760,140.

Emergency Rule

Effective November 3, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies and establishes the following regulations to govern the disproportionate share hospital payment methodologies:

I. General Provisions

A. Reimbursement will no longer be provided for indigent care as a separate payment to hospitals qualifying for disproportionate share payments.

B. Total cumulative disproportionate share payments under any and all DSH payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment or the state disproportionate share appropriated amount.

C. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments

resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

D. DSH payments to a hospital other than a small rural or state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during the previous state fiscal year ending. DSH payments to a small rural hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during April 1 through March 31 of the previous year. DSH payments to a state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest year-end cost report for the year ended during the period July 1 through June 30 of the previous year except that a small rural hospital's qualification is based on the hospital's year-end cost report for the year ending during the period April 1 through March 31 of the previous year. Only hospitals that return timely DSH qualification documentation will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. Hospitals/units which close or withdraw from the Medicaid program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

G. *Net Uncompensated Cost* is defined as the cost of furnishing inpatient and outpatient hospital services net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. It is mandatory that qualifying hospitals seek all third-party payments including Medicare, Medicaid and other third-party carriers. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments.

H. No additional payments shall be made if an increase in days is determined after audit. Recoupment of overpayment from reductions in pool days originally reported shall be redistributed to the hospital that has the largest number of inpatient days attributable to individuals entitled to benefits under the state plan of any hospitals in the state for the year in which the recoupment is applicable.

I. Disapproval of any payment methodology(ies) by the Health Care Financing Administration does not invalidate the remaining methodology(ies).

II. Qualifying Criteria for a Disproportionate Share Hospital

A. A hospital must have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligibles. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures; or

B. A hospital treats inpatients who are predominantly individuals under 18 years of age; or

C. A hospital did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

D. A hospital has a utilization rate in excess of either of the below specified minimum utilization rates:

1. *Medicaid Utilization Rate*—a fraction (expressed as a percentage), the numerator of which is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator of which is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

2. *Low-Income Utilization Rate*—the sum of:
a. the fraction (expressed as a percentage), the numerator of which is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments, and the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

b. the fraction (expressed as a percentage), the numerator of which is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in Section II.D.2.a in the period which are reasonably attributable to inpatient hospital services; and the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. The above numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations; or

3. effective November 3, 1997, be a small rural hospital as defined in Section III.B.

E. In addition to the qualification criteria outlined in Section II.A.-D, effective July 1, 1994, the qualifying disproportionate share hospital must also have a Medicaid inpatient utilization rate of at least 1 percent.

III. Reimbursement Methodologies

A. Public State-Operated Hospitals

1. A *public state-operated hospital* is a hospital that is owned or operated by the State of Louisiana.

2. DSH payments to individual public state-owned or operated hospitals are equal to 100 percent of the hospital's net uncompensated costs subject to the adjustment provision in Section III.A.3. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

3. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH

appropriated amount, the department shall calculate a pro rata decrease for each public (state) hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH appropriated amount.

B. Small Rural Hospitals

1. A *small rural hospital* is a hospital (other than a long-term care hospital, rehabilitation hospital, or free-standing psychiatric hospital but including distinct part psychiatric units) meeting the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and:

(1) is located in a parish with a population of less than 50,000; or

(2) is located in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a).

2. Payment is based on uncompensated cost for qualifying small rural hospitals in the following two pools:

a. public (nonstate) *small rural hospitals* are small rural hospitals as defined above which are owned by a local government;

b. *private small rural hospitals* are small rural hospitals as defined above that are privately owned.

3. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the period April 1 through March 31 of the preceding year multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

4. A pro rata decrease necessitated by conditions specified in Section I.B for rural hospitals described in Section III will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

C. All Other Hospitals (Private and Public Nonstate Rural Hospitals over 60 Beds, All Private Urban Hospitals, Free-Standing Psychiatric Hospitals, Exclusive of State Hospitals, Rehabilitation Hospitals, and Long-Term Care Hospitals)

1. Annualization of days for the purposes of the Medicaid days pools is not permitted. Payment is based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Amount will be obtained by DHH from a report of paid Medicaid days by service date.

2. Payment is based on Medicaid days provided by hospitals in the following two pools:

a. *acute care hospitals* are acute care, rehabilitation, and long-term care hospitals not described in Section III.B (excluding distinct part psychiatric units);

b. *psychiatric hospitals* are free-standing psychiatric hospitals and distinct part psychiatric units not included in Section III.B.

3. Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals in the pool, and multiplying by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days. Pool amounts shall be allocated based on the consideration of the volume of days in each pool or the average cost per day for hospitals in each pool.

4. A pro rata decrease necessitated by conditions specified in Section I.B for hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule. A copy of this emergency rule is available at the parish Medicaid offices for review by interested persons.

Bobby P. Jindal
Secretary

9711#007

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Home and Community Based
Services—Elderly Home Care

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule shall be adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers four Home and Community Based Services Waiver Programs.

Participation in each home and community based services waiver is limited to a specific number of participants based on the approval of the waiver application by the Health Care Financing Administration. Home and community based services waiver programs are based on federal criteria which allow services to be provided in a home or community based setting for a recipient who would otherwise require institutional care. Costs for participants of the program must not exceed the costs for recipients of institutional care. Currently, daily costs in the Home Care for the Elderly waiver are exceeding the costs of comparable residents of nursing homes, thus jeopardizing the program. Therefore, in order to be able to continue this program the bureau is making changes in admissions criteria, the target population, management of services, and types of services available (*Louisiana Register*, Volume 23, Numbers 3 and 7).

This subsequent emergency rule continues the above provisions in force and is necessary to maintain federal financial participation for the Home Care for the Elderly waiver program and to preserve the health and welfare of individuals participating in this waiver program.

Emergency Rule

Effective November 27, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the Home Care for the Elderly waiver program to:

- 1) redefine the target population served by the waiver and rename the waiver;
- 2) establish an average cost per day limit each participant of the waiver;
- 3) establish and define new services;
- 4) establish methodology for the assignment of slots; and
- 5) clarify admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care.

The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. The assignment of vacated and previously unoccupied waiver slots; admission and discharge criteria; the array of services; calculation of waiver costs; mandatory reporting requirements and reimbursement for services provided prior to the approval of the plan of care shall be determined in accordance with the following guidelines.

Definition of Targeted Population for the Waiver

This home and community based services waiver is targeted at persons who qualify for admission to a nursing facility and are over age 65 or adults, age 21 or over, who are disabled according to Medicaid standards. It shall be called the Elderly and Disabled Adult waiver.

Guarantee of Waiver Costs

In order to assure the cost effectiveness of this entire home and community based services waiver each participant shall be limited to an array of services whose average cost per day shall not exceed a limit set by the bureau. This figure shall be set annually at a percentage of the average costs borne by the Medicaid program for the equivalent population receiving nursing facility services, with an allowance for temporary,

brief periods of excess costs in order to maintain a participant in the community. Case managers shall complete a budget analysis form as part of each care plan which shall list the types and number of services necessary to maintain the waiver participant safely in the community, the cost of those services and the average cost per day covered by the care plan.

Programmatic Allocation of Waiver Slots

The waiting list shall be used to protect the individual's right to be evaluated for waiver eligibility. Each waiver slot may be filled only once during each waiver year. When funding becomes available for a new waiver slot or a slot that has been vacated in the previous waiver year, staff of the Intake Offices at the local Councils on Aging shall notify the next individual in order of application on the waiting list in writing that a slot is available and that they are next in line to be evaluated for possible waiver slot assignment. A copy of the notification letter shall be forwarded to the Health Standards Section of BHSF. A case manager assists in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible either financially or medically, that individual is notified in writing and a copy of the notice is forwarded to the Council on Aging office. The next person on the waiting list is notified as stated above and the process continues until an eligible person is encountered. A waiver slot is assigned to an individual when eligibility is established and the individual is certified.

Waiver Admission Criteria

Admission to this Waiver Program shall be determined in accordance with the following criteria.

1. initial and continued Medicaid eligibility as determined by the parish BHSF Office;
2. initial and continued eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. the plan of care must provide justification that the waiver services are appropriate, cost effective and represent the least restrictive treatment alternative for the individual; and
4. assurance that the health and safety of the individual can be maintained in the community with the provision of reasonable amounts of waiver services as determined by the Health Standards Section of BHSF.

Waiver Discharge Criteria

Participants shall be discharged from this Waiver Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish BHSF Office;
2. loss of eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. incarceration or placement under the jurisdiction of penal authorities, or courts;
4. change of residence to another state with the intent to become a resident of that state;
5. admission to a nursing facility or any other long term care institutional setting;
6. the health and welfare of the waiver participant cannot be assured in the community through the provision of amounts of waiver services within the cost cap as determined

by the Health Standards Section of BHSF, i.e., the waiver participant presents a danger to himself or others;

7. failure to cooperate in either the eligibility determination process or the performance of the care plan; or

8. continuity of services is interrupted as a result of the participant not receiving waiver services during a period of 14 or more consecutive days. This does not include interruptions in services because of hospitalization.

Mandatory Reporting Requirements

Case managers and waiver service providers are obligated to report changes that could affect the waiver participant's eligibility, including but not limited to those changes cited in the discharge criteria, to either the parish BHSF Office or the Health Standards Section of BHSF within five working days. In addition, case managers and waiver service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and well-being of the waiver participant and completing an incident report. The incident report shall be submitted to the Health Standards Section of BHSF within five working days of the incident.

Definition of Services

The following services will be made available to participants in this waiver by employees of Personal Attendant Provider agencies in half hour increments:

1. *Personal Care Attendant*—assistance with eating, bathing, dressing, personal hygiene, or activities of daily living.

2. *Household Supports*—services consisting of general household activities (meal preparation and routine household care) provided by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.

3. *Personal Supervision (day)*—non-medical care, supervision and socialization, provided to a functionally impaired adult. Personal supervisors may assist or supervise the individual with such tasks as meal preparation, laundry and shopping, but do not perform these activities as discrete services as the household support worker does. The provision of this service does not entail hands-on nursing care.

4. *Personal Supervision (night)*—this type of supervision is to provide for the safety of individuals living alone who are limited in mobility or cognitive function to such an extent that they may not be able to preserve their own safety in dangerous situations.

Reimbursement of Waiver Services

Reimbursement shall not be made for waiver services provided prior to the BHSF approval of the care plan.

Bobby P. Jindal
Secretary

9711#043

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Long-Term Hospital Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule, as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act, and as directed by the 1997-98 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Medicaid Program published reimbursement methodology for hospital services, including long-term acute hospitals, under specialty hospital peer groups in the June 20, 1994 rule (*Louisiana Register*, Volume 20, Number 6), and subsequently amended the percentile used to establish rates at the lowest blended per diem rate for each specialty hospital category without otherwise changing the methodology (*Louisiana Register*, Volume 22, Number 1). Reimbursement for psychiatric treatment in long-term acute hospitals was later disjoined from the methodology for other types of services provided in long-term acute hospitals to be paid at the same prospective per diem rate established for psychiatric treatment facilities (*Louisiana Register*, Volume 23, Number 2).

Effective August 1, 1997, the department adopted an emergency rule which altered the percentile at which the components used in calculation of the rate for services, other than psychiatric services, provided by a long-term hospital are considered. Under this methodology, the per diem rate is based on the thirtieth percentile facility in the categories of operating costs, movable equipment, and fixed capital rather than the weighted average. The emergency rule did not otherwise alter the factors considered in setting rates or the calculations performed, nor did it affect criteria for participation, service quality expectations, or reporting requirements. The department now adopts a rule to continue the above provisions regarding the reimbursement methodology for hospital services including long-term acute hospitals under special and hospital peer groups.

Emergency Rule

Effective November 29, 1997 and after, the Department of Health and Hospitals, Bureau of Health Services Financing establishes reimbursement for inpatient services provided by

long-term care hospitals, excluding psychiatric services, at a per diem rate based on the thirtieth percentile facility by cost category as reported in the "as-filed" cost report for the hospital's fiscal year ending between July 1, 1995 and June 30, 1996. Cost categories include operating costs, movable equipment, and fixed capital. Subsequent year rates will be updated annually using the lower of the DRI Type Hospital Market Basket Index, the Consumer Price Index—All Urban Consumers, or the Medicare PPS Market Basket Index. This does not affect criteria for participation, service quality expectations, reporting requirements or alter the factors considered in setting rates and the calculations performed.

Bobby P. Jindal
Secretary

9711#045

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Private Intermediate Care Facility for the Mentally Retarded—Qualifying Loss Review

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program, as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the Administrative Procedure Act, R.S. 49:953(B) et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing published a rule to establish a reimbursement methodology for private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) (*Louisiana Register*, Volume 15, Number 10). The department decided to amend the October 1989 rule to incorporate a qualifying loss review process for private intermediate care facilities for mentally retarded seeking an adjustment to the per diem rate. *Qualifying loss* in this context refers to that estimated amount by which the facility's cost for the affected rate period exceeds the anticipated Title XIX Medicaid reimbursement. *Cost* in this context means a facility's allowable cost incurred in providing covered services to Title XIX Medicaid recipients, as based on Louisiana's *ICF/MR Standards for Payment Manual*. The qualifying loss provision is only applicable to reductions in rates due to rebasing. The department is adopting this subsequent emergency rule in order to continue the above provisions in force.

Emergency Rule

Effective November 30, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the rule governing the reimbursement of private Intermediate Care Facilities for the

Mentally Retarded (ICF/MR) to incorporate the following qualifying loss review process for those facilities seeking an adjustment to their per diem rates.

XI. Qualifying Loss Review Process

A. Basis for Administrative Review

1. Allowable Basis. The following matters are subject to a qualifying loss review:

- a. that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied;
- b. that incorrect data or erroneous calculations were used;
- c. the facility demonstrates that the estimated reimbursement, based on its prospective rate, is less than 95 percent of the estimated costs to be incurred by the facility in providing Medicaid services during the period the rate is in effect in compliance with the applicable state and federal laws related to quality and safety standards.

2. Nonallowable Basis. The following matters are not subject to a qualifying loss review:

- a. the methodology used to establish the per diem;
- b. the use of audited and/or desk reviews to determine allowable costs;
- c. the economic indicators used in the rate-setting methodology;
- d. rate adjustments related to changes in federal or state laws, rules, or regulations (e.g., minimum wage adjustments);
- e. rate adjustments related to reduction or elimination of extraordinary rates.

B. Request for Administrative Review. Any intermediate care facility for the mentally retarded (hereafter referred to as facility) seeking an adjustment to the per diem rate shall submit a written request for administrative review to the director of Institutional Reimbursements (hereafter referred to as director) in the Department of Health and Hospitals (hereafter referred to as department).

1. Time Frames

a. Requests for administrative review must be received by DHH within 30 days of either receipt of notification of rate reduction or promulgation of this rule, whichever is later. The receipt of the letter notifying the facility of its rates will be deemed to be five days from the date of the letter.

b. The department shall acknowledge receipt of the written request within 30 days after actual receipt.

c. The director shall notify the facility of his decision within a reasonable time after receipt of all necessary documentation, including additional documentation or information requested after the initial request is received. Failure to provide a decision within a reasonable time does not imply approval.

d. If the facility wishes to appeal the director's decision, the appeal request must be received by the Bureau of Appeals within 30 days after receipt of the written decision of the director. The receipt of the decision is deemed to be five days from the date of the decision.

2. Content of the Request. The facility shall bear the burden of proof in establishing the facts and circumstances

necessary to support a rate adjustment. Any costs that the provider cites as a basis for relief under this provision must be calculable and audit able.

a. **Basis of the Request.** Any facility seeking an adjustment to the per diem rate must specify all of the following:

- i. the nature of the adjustment sought;
- ii. the amount of the adjustment sought;
- iii. the reasons or factors that the facility believes justify an adjustment.

b. **Financial Analysis.** An analysis demonstrating the extent to which the facility is incurring, or expects to incur, a qualifying loss shall be provided by the facility unless the basis for review is one of the following:

- i. the rate setting methodology or criteria for classifying facilities were incorrectly applied; or
- ii. incorrect data or erroneous calculations were used in establishment of the facility's per diem; or
- iii. the facility has incurred additional costs because of a catastrophe.

C. Basis for Rate Adjustment

1. **Factors Considered.** The department shall award additional reimbursement to a facility that demonstrates by substantiating evidence that:

- a. the facility will incur a qualifying loss;
- b. the loss will impair a facility's ability to provide services in accordance with state and federal health and safety standards;
- c. the facility has satisfactorily demonstrated that it has taken all appropriate steps to eliminate management practices resulting in unnecessary expenditures; and
- d. the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size Level of Care (LOC).

2. **Determination to Award Relief.** In determining whether to award additional reimbursement to a facility that has made the showing required, the director shall consider one or more of the factors and may take any of the following actions:

- a. the director shall consider whether the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size LOC. Such factors may include, but are not limited to, extraordinary circumstances beyond the control of the facility; or
- b. the director may consider, and may require the facility to provide financial data, including but not limited to, financial ratio data indicative of the facility's performance quality in particular areas of operations; or
- c. the director shall consider whether the facility has taken every reasonable action to contain costs on a facility-wide basis. In making such a determination, the director may require the facility to provide audited cost data or other quantitative data and information about actions that the facility has taken to contain costs.

D. **Awarding Relief.** The director shall make notification of the decision to award or not award relief in writing.

1. Basis of Adverse Decision

a. The director may determine that the review request is not within the scope of the purpose for qualifying loss review.

b. The director may determine that the information presented does not support the request for rate adjustment.

2. **Adverse Decision Appeal.** Averse decisions may be appealed to the Office of the Secretary, Bureau of Appeals for the Department of Health and Hospitals, Box 4183, Baton Rouge, LA 70821-4183 within 30 days of receipt of the decision.

3. Awarding Relief

a. **Action by Director.** In awarding relief under this provision, the director shall:

i. make any necessary adjustment so as to correctly apply the reimbursement methodology to the facility submitting the appeal, or to correct calculations, data errors, or omissions; or

ii. increase the facility's per diem rate by an amount that can reasonably be expected to ensure continuing access to sufficient services of adequate quality for Title XIX Medicaid recipients served by the facility.

b. **Scope of Decisions.** Decisions by the director to recognize omitted, additional, or increased costs incurred by any facility; to adjust the facility rates; or to otherwise award additional reimbursement to any facility shall not result in any change in the bed size LOC per diem for the remaining facilities in the bed size LOC, except that the department may adjust the per diem if the facilities receiving adjustment comprise over 10 percent of total utilization for that bed size LOC, based on the latest audited and/or desk reviewed cost reports.

c. **Effective Date.** The effective date of the adjustment shall be the later of:

- i. the date of occurrence of the rate change upon which the rate appeal is in response; or
- ii. the effective date of this rule.

d. **Limitations.** The director shall not award relief to a provider in excess of 95 percent of appellant facility's cost coverage determined by inflationary trending of the year on which rates are based. The rate adjustment shall also be limited to no more than the amount of the rate for the previous rate year. Any facility awarded relief shall be audited and cost settled up to, but not over, the amount of the adjusted rate. Should a single facility that is an entity under common ownership or control with another facility or group of facilities be awarded relief, all facilities under common ownership or control with the facility awarded relief will be subject to audit and cost settlement up to, but not over, the amount of their rates.

Bobby P. Jindal
Secretary

9711#044

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing

Substance Abuse Clinics

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act, and as directed by the 1997-98 General Appropriation Act.

This emergency rule shall be adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage for substance abuse clinic services under the Medicaid Program. In February 1996, the bureau adopted a rule to reimburse substance abuse clinics for only one service per day per recipient (*Louisiana Register*, Volume 22, Number 2). Thereafter, the bureau determined it was necessary to amend the February 1996 rule to:

1. establish a maximum service limit of 26 visits per year for recipients age 21 and older for individual and group counseling therapy;
2. limit the total number of persons in group counseling therapy to no more than six persons per group and reduce the reimbursement rate to \$10 per eligible recipient;
3. establish a maximum service limit of 12 visits per year, per eligible recipient for family counseling therapy for recipients age 21 and older; and
4. terminate coverage for collateral counseling services under the Medicaid Program. The bureau now finds it necessary to continue provisions of the above emergency rule in force.

Emergency Rule

Effective for dates of service November 29, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing revises the policy governing the provision of substance abuse clinic services under the Medicaid Program to:

1. establish a maximum service limit of 26 visits per year for recipients age 21 and older for individual and group counseling therapy;
2. limit the total number of persons in group counseling therapy to no more than six persons per group and reduce the reimbursement rate to \$10 per eligible recipient;
3. reduce the maximum service limit to 12 visits per year, per eligible recipient for family counseling therapy for recipients age 21 and older; and
4. terminate coverage for collateral counseling services under the Medicaid Program.

Bobby P. Jindal
Secretary

9711#046

DECLARATION OF EMERGENCY

Department of Natural Resources
Office of Conservation

Fees (LAC 43:XIX.Chapter 8)

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, Sections 21.B.(1)(a-c), (2)(a-c) and (3), as amended, and in conformity with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) and (2) and 954(B)(2), as amended, the following emergency rule and reasons therefor 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 assuring continued operation of statutory functions of the Office of Conservation during Fiscal Year 1997-98 and beyond, including but not limited to, the regulation of oil and gas and other industries through the permitting and monitoring of such operations and activities within the regulatory jurisdiction of the Office of Conservation.

Because of increasing financial and budgetary difficulties being encountered by the state of Louisiana, including the Office of Conservation, and because such financial and budgetary difficulties would prohibit the Office of Conservation from continuing day-to-day operation of critical economic and environmental protection programs, it has been determined that there exists an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally unless immediate funds are generated for use by the Office of Conservation. The alternative would be to allow the indiscriminate and unregulated production of oil, gas and other minerals, indiscriminate and unregulated generation and disposal of oil field waste, and the indiscriminate and unregulated underground injection of oil field waste, saltwater, and other wastes into the environment.

Confronted with the real, imminent peril of having the Office of Conservation in a posture of being unable to fulfill its statutory obligations, the commissioner of Conservation has undertaken a budgetary analysis and method of securing funds as provided in law to assure continued operation of the Office of Conservation during state Fiscal Year 1997-98 and beyond.

Protection of the public and our environment, therefore, requires the commissioner of Conservation to take immediate steps to assure continued operation of the Office of Conservation during Fiscal Year 1997-98 and beyond, and in so doing, requires the Office of Conservation to address the existing financial and budgetary problems. The emergency rule, Statewide Order No. 29-R set forth hereinafter, is now adopted by the Office of Conservation.

The effective date for this emergency rule is November 21, 1997 and remains effective for a period of not less than 120 days hereafter, or until the adoption of the final version of Statewide Order No. 29-R as noted herein, whichever occurs first.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 2. Statewide Order No. 29-R

Chapter 8. Fees

§801. Definitions

BOE—annual Barrels Oil Equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 8.

Capable Gas—natural and casinghead gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue.

Class I Well—a Class I injection well used to inject hazardous, industrial, or municipal wastes into the subsurface, which falls within the regulatory purview of Statewide Order Nos. 29-N-1 or 29-N-2.

Class I Well Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class I wells in an amount not to exceed \$336,000 for Fiscal Year 1997-1998, and may increase by a sum not to exceed 3½ percent annually for Fiscal Years 1998-1999 and 1999-2000.

Class II Well—a Class II injection well which injects fluids which are brought to the surface in connection with conventional oil or natural gas production (Status 63), for annular disposal wells (Status 64), for enhanced recovery of oil or natural gas (Status 41, 42, 43), and for storage of hydrocarbons which are liquid at standard temperature and pressure (Status 44, 47). For purposes of administering the exemption provided in R.S. 30:21(B)(1)(c), such exemption is limited to operators who operate Status 63 wells serving a stripper oil well or an incapable gas well certified pursuant to R.S. 47:633 by the severance tax division of the Department of Revenue and located in the same field as such Class II well.

Class II Well Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on nonexempted Class II wells in an amount not to exceed \$493,000 for Fiscal Year 1997-1998, and may increase by a sum not to exceed 3½ percent annually for Fiscal Years 1998-1999 and 1999-2000.

Production Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity between the producing wells. The tiered system shall be established annually by rule on annual volumes of capable oil and capable gas production in an amount not to exceed \$1,918,600 for Fiscal Year 1997-1998, and may increase by a sum not to exceed 3½ percent annually for Fiscal Years 1998-1999 and 1999-2000. Incapable oil, stripper oil, incapable gas well gas and incapable oil well gas shall be exempt from this fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§803. Fee Schedule for Fiscal Year 1997-1998

A. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers:

	Annual Production (Barrel Oil Equivalent)	Fee (\$ per well)
Tier 1	0	0
Tier 2	1—5,000	30
Tier 3	5,001—15,000	60
Tier 4	15,001—30,000	175
Tier 5	30,001—60,000	350
Tier 6	60,001—110,000	700
Tier 7	110,000—9,999,999	1300

B. Operators of record of Class I wells are required to pay \$8,000 per well.

C. Operators of record of nonexempt Class II wells are required to pay \$300 per well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§805. Failure to Comply

A. Operators of operations and activities defined in §801 are required to timely comply with this order. Failure to comply within 30 days past the due date of any required fee payment will subject the operator to civil penalties under the provisions of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as well as penalties provided in other sections of Title 30, including R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§807. Severability and Effective Date

A. The fees set forth in §803 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R, and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. To the extent the fees as provided in §803 may duplicate existing fees in LAC 43:XIX.201-207, this order shall supersede such existing fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

Summary

The emergency rule hereinabove adopted evidences the finding of the commissioner of Conservation that there is an

imminent risk to public health, safety and welfare, and that there is not time to provide adequate notice to interested parties. The commissioner of Conservation also finds it impractical to provide a public hearing regarding this emergency rule given the extreme urgency of the matter. However, the commissioner of Conservation notes again that a copy of the permanent Statewide Order No. 29-R will be sent out in the near future, with a public hearing to be held as per the requirements of the Administrative Procedure Act.

The commissioner of Conservation concludes that the above emergency rule will better serve the purposes of the Office of Conservation as set forth in Title 30 of the Revised Statutes, and is consistent with legislative intent. The adoption of the above emergency rule meets all the requirements provided by Title 49 of the Louisiana Revised Statutes. The adoption of the above emergency rule is not intended to affect any other provisions, rules, orders, or regulations of the Office of Conservation, except to the extent specifically provided in this emergency rule.

Within five days from date hereof, notice of the adoption of this emergency rule shall be given to all parties on the mailing list of the Office of Conservation by posting a copy of this emergency rule with reasons therefor to all such parties. This emergency rule with reasons therefor shall be published in full in the *Louisiana Register* as prescribed by law. Written notice has been given contemporaneously herewith notifying the governor of the state of Louisiana, the attorney general of the state of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Office of the State Register of the adoption of this emergency rule and reasons for adoption.

Warren A. Fleet
Commissioner

9711#018

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Juvenile Transfer to Adult Facility (LAC 22:I.335)

The Department of Public Safety and Corrections, Corrections Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) in order to implement the provisions of R.S. 15:902.1 and adopts the following emergency rule, effective November 6, 1997.

Emergency rulemaking is necessary as the backlog of juveniles pending assignment to secure state correctional facilities has reached crisis proportions. R.S. 15:902.1 authorizes the transfer of certain adjudicated juvenile delinquents to adult facilities and procedures have been developed to implement such transfers. Implementation of the provisions of the act allows for an immediate reduction in the backlog.

Emergency rulemaking is also necessary due to the fact that the time limit was such that the department could not

promulgate its final rule prior to the expiration date of the original emergency rule. In order for there to be no gap in the implementation of the transfer of juveniles to adult facilities, this additional emergency rule is imperative.

This emergency rule shall remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

§335. Juvenile Transfer to Adult Facility

A. Purpose. To establish the secretary's policy regarding the limited transfer of juvenile offenders 17 years of age or older to adult facilities.

B. To Whom This Regulation Applies. LAC 22:I.335 is applicable to the deputy secretary, assistant secretaries, wardens, and director of the Division of Youth Services of the Department of Public Safety and Corrections.

C. Definitions

Adult—an individual convicted by a criminal court and sentenced to the custody of the Department of Public Safety and Corrections (DPS&C).

Disposition—the written order of the juvenile court, following adjudication, which specifies the court's sentence.

Juvenile—an individual who is adjudicated delinquent by a judge exercising juvenile jurisdiction and sentenced to the custody of the DPS&C.

D. Policy

1. It is the secretary's policy, in accordance with R.S. 15:902.1, to authorize the limited transfer of juveniles adjudicated delinquent to adult facilities when the juveniles have attained the age of 17 years *and* are otherwise eligible as defined by this regulation.

2. Juvenile offenders who are adjudicated delinquent for an offense that, if committed by an adult, could not result in a sentence at hard labor, are not eligible for transfer.

3. Generally, juvenile offenders will be transferred to one of the following adult facilities:

- a. Adult Reception and Diagnostic Center (ARDC);
- b. Elayn Hunt Correctional Center (EHCC);
- c. Wade Reception and Diagnostic Center (WRDC);
- d. David Wade Correctional Center (DWCC);
- e. Louisiana Correctional Institute for Women (LCIW).

4. Juvenile offenders in adult facilities will not have a parole or diminution of sentence release date.

a. They will only have a "full term date." This date will be either:

- i. their twenty-first birthday;
- ii. their eighteenth birthday if the crime was committed before their thirteenth birthday and it is not a crime enumerated under *Louisiana Children's Code*, Article 897.1;
- iii. the date upon which the juvenile has completed the period of commitment as specified in the judgment of the juvenile court; or
- iv. the date which reflects the maximum term that an adult could receive if sentenced for the same offense, whichever is earlier.

b. If the period of commitment specified by the juvenile court exceeds the twenty-first birthday, the eighteenth birthday under circumstances outlined, or the maximum term for which an adult could be sentenced for the same crime, then the Office of Youth Development and the Headquarters Legal Section should be notified immediately.

5. Absent special statutory or regulatory restrictions to the contrary, juveniles in adult facilities will participate in all work, education, and other rehabilitative programs on the same basis as adults and will be subject to the same classification and disciplinary processes as adults, including custody status determination. Security supervision and security practices will also be the same for juvenile offenders in adult facilities as for adult inmates.

6. Records of juveniles housed in adult facilities shall be confidential and information may not be disclosed to *anyone* except in accordance with department Regulation No. B-03-003, "Access to and Release of Juvenile Offender and Ex-Offender Records," as set forth in R.S. 15:574.12 and *Louisiana Children's Code*, Article 412.

E. Procedures

1. A classification committee will be formed at all juvenile facilities to review offenders for eligibility and suitability for transfer and to make appropriate recommendations to the warden. It will be the responsibility of this committee to review all relevant information.

a. The offender shall be given 24-hour notice of the proposed transfer and shall be allowed to appear before the classification committee to provide input into the decision making process. He may select a staff representative to assist him in accordance with the process outlined in the "Disciplinary Rules and Procedures for Juvenile Offenders."

b. The following variables should be considered by the classification committee when evaluating a juvenile offender for possible transfer to an adult facility:

- i. chronological age of 17 years or older;
- ii. emotional and physical maturity;
- iii. disciplinary history and potential to disrupt juvenile institutional operations;
- iv. potential to benefit from educational programs;
- v. potential to benefit from other programs;
- vi. offenders diagnosed with mental health and/or medical special needs who can be better served in an adult facility;

vii. offenders who pose a threat to security, i.e., who are considered escape risks, who have exhibited violent behavior, who are committed for serious offense(s), or who have an extensive criminal history;

viii. to accomplish one of the following objectives:

- (a). minimize risk to the public;
- (b). minimize risk to institutional staff; and
- (c). minimize risk to other offenders.

c. Disciplinary history may impact the recommendation, but the transfer itself is not a disciplinary sanction or disciplinary activity. The disciplinary committee can refer offenders to the classification committee for review.

2. The warden of each juvenile facility will review the recommendation made by the classification committee and will make the final determination relative to transfer. The

secretary and assistant secretaries will be notified of any transfer. In addition, the warden will provide notification to the appropriate juvenile judge, Division of Youth Services office, the legal guardian, and the classification administrator at ARDC, and WRDC at least 72 hours prior to the proposed transfer (unless waived by the secretary or his designee).

3. Notification to the classification administrator at ARDC should include pertinent information, e.g., the Juvenile Information Reporting Management System (JIRMS) master record, judicial commitment documents, classification committee report and recommendation, and warden's decision. ARDC PreClass Section will then assign a unique six digit Department of Corrections (DOC) number to each juvenile-in-adult custody, (such number will begin with the numeral seven followed by the juvenile's original JIRMS number), update the CAJUN II information, and establish the adult institutional record prior to transfer (except in emergency cases). The classification administrator will schedule the date of transfer and will notify the appropriate juvenile institution.

4. The sending facility will be responsible for the transportation of the offender to the appropriate receiving institution and will provide all institutional and medical records at the time of transfer in accordance with department Regulation No. B-06-001, "Health Care." The offender's personal funds should be transmitted by check at the time of transfer or as soon as possible thereafter. In addition, the JIRMS transfer screen will be updated to reflect the transfer and will be subsequently utilized for inquiry purposes.

5. Initial evaluation to determine appropriate housing while in the reception process should include evaluation of emotional and physical maturity.

6. ARDC, WRDC, or LCIW will conduct a full evaluation in accordance with department regulations and ACA Standards to determine subsequent placement at EHCC or DWCC (or suitable housing assignment at LCIW). The evaluation will include, but is not limited to, the following:

- a. emotional and physical maturity to evaluate the need for assignment to Level 1 or Level 2 protective custody;
- b. review of information previously generated by JRDC, as available;
- c. history of gang affiliation and prior juvenile institutional assignment and security history;
- d. special educational needs or other programming needs and the appropriateness of assignment to academic and/or vocational programs;
- e. medical needs, including substance abuse assessment, and assignment of an appropriate medical level of care;
- f. mental health needs with particular emphasis on suicide potential and assignment of an appropriate mental health level of care; and
- g. consideration of geographical location.

7. Upon completion of evaluation, the Transfer Section at ARDC will schedule transfer to the appropriate permanent facility.

8. The receiving institution will assign housing and provide services as set forth in department regulations and American Correctional Association (ACA) Standards. The

records office of the receiving institution will maintain the juvenile institutional record and the adult inmate record and will update the CAJUN database. Upon discharge, all institutional records will be returned to the Juvenile Reception and Diagnostic Center at Jetson Correctional Center for Youth.

9. The adult facility must report the location and condition of the juvenile to the juvenile court every six months (or more frequently if requested). This format may be utilized to make early release recommendations as appropriate.

10. Sex offender notifications are generally not applicable to juvenile offenders housed in adult facilities. Other crime victim notice requirements for juveniles as

indicated in department Regulation No. C-01-007, "Crime Victims Services Bureau," are applicable.

11. Visiting lists will be established pursuant to the provisions of department Regulation No. C-03-006, "Inmate Visitation." These transfers are to be considered as new admissions for the purposes of §335.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:902.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 23:

Richard L. Stalder
Secretary

9711#020

Rules

RULE

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Structural Pest Control Commission**

**Wood Destroying Insects
(LAC 7:XXV.107)**

Editor's Note: A portion of the following rules, which appeared on pages 854 through 856 of the July 20, 1997 *Louisiana Register*, is being republished to correct a codification error.

Editor's Note: All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§107. License to Engage in Structural Pest Control;

**Work Required: Qualifications of Applicant;
Requirements for Licensure; Phases of Structural
Pest Control License; Conditions of the License**

A. - H. ...

I. All applicants who are approved by the commission will, upon successfully completing the examination for licensure as set forth in §109 hereof, receive a single license to engage in structural pest control work, which license shall specify on the face thereof the specific phase or phases of structural pest control work for which the license is issued, as follows:

1. General Pest Control
2. Commercial Vertebrate Control
3. Termite Control
4. Structural Fumigation
5. Ship Fumigation
6. Commodity Fumigation
7. Wood Destroying Insect Report (WDIR) Inspector

J. - Q. ...

R. Persons licensed in termite control on or before September 30, 1997 shall attend a wood destroying insect report training session prior to being qualified to become a licensed WDIR inspector. Said training session must have prior approval by LDAF. Persons licensed on or after October 1, 1997 and persons licensed in termite control on or before September 30, 1997 who do not attend a wood destroying insect report training session, shall complete the requirements set forth in §107.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15: 955 (November 1989), LR 19:1009 (August 1993), LR 23:855 (July 1997), repromulgated LR 23:1493 (November 1997).

Bob Odom
Commissioner

9711#074

RULE

**Department of Agriculture and Forestry
Office of Animal Health Services
Livestock Sanitary Board**

**Brucellosis and Pseudorabies Quarantining; Vaccinating
and Testing of Swine (LAC 7:XXI.905 and 907)**

Editor's Note: All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

In accordance with provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry, Livestock Sanitary Board amends rules and regulations governing the requirements for quarantining, vaccinating and testing of swine for brucellosis and pseudorabies in Louisiana.

These rules comply with and are enabled by R.S. 3:2093 et seq.

No preamble concerning the proposed rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 9. Swine

§905. Quarantining, Vaccinating and Testing Swine for Brucellosis and Pseudorabies

A. The state veterinarian or his representative shall have the authority to conduct epidemiologic investigations and quarantine of:

1. swine herds in which one or more of the animals are found to be positive to pseudorabies, as determined by the epidemiologist, based on the interpretation of official tests;
2. the herd of origin of swine that have been added to a herd that becomes quarantined because of pseudorabies, if swine have been acquired from said herd of origin within the last 12 months;
3. herds which have received swine from herds found to have pseudorabies;

B. Herds of swine including feedlots, within a 1.5-mile radius of the quarantined herd, will be monitored in accordance with the recommendation of the state veterinarian and/or epidemiologist by either a test of all breeding swine or by an official random sample test;

C. A herd plan and epidemiology report must be completed within 30 days from the date an animal that originated from the herd was found to be a reactor at slaughter. A herd test must be completed within 45 days from the date an animal that originated from the herd was found to be a reactor at slaughter.

D. To be eligible for release from quarantine, a swine herd must meet the following requirements:

1. All swine positive to an official pseudorabies test must be tagged with an official reactor tag in the left ear and permitted on Form VS 1-27 to recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws within 15 days. All swine, over 6 months of age and a random sampling of any growing/finishing swine which remain in the herd, must be tested negative 30 days or more after removal of reactors. No livestock on the premises shall have shown signs of pseudorabies after removal of reactors.

2. Whole Herd Depopulation. All swine on the premises must be tagged with an official reactor tag in the left ear and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

E. A herd of swine quarantined because of brucellosis must meet one of the following requirements:

1. All swine positive to an official brucellosis test must be tagged with an official reactor tag in the left ear and permitted on Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises by disposal means authorized by applicable state laws within 15 days.

a. All swine over 6 months of age which remain in the herd, must be tested according to an approved herd plan.

b. A herd may be released from quarantine upon completion of three negative Complete Herd Tests (CHT):

i. the first test must be completed at least 30 days after removal of the last reactor;

ii. a second CHT must be conducted 60-90 days following the first CHT;

iii. a third CHT is required 60-90 days following the second CHT.

iv. a fourth CHT is required six months after the third CHT.

2. Whole Herd Depopulation

a. All swine on the premises must be tagged with an official reactor tag in the left ear and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved"

location by disposal means authorized by applicable state laws.

b. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

F. All movement from pseudorabies/brucellosis quarantined herds, must be accompanied by a VS Form 1-27, Permit for Movement of Restricted Animals, listing the official, individual identification of each animal to be removed.

1. This form must be delivered to an authorized representative at destination.

2. These permits will be issued by a representative of the Livestock Sanitary Board.

G. All exposed swine moving from quarantined premises in interstate or intrastate commerce, must move directly to a recognized slaughter establishment or to an approved swine quarantined feedlot or rendering plant.

H. The use of pseudorabies vaccine is prohibited, except by permission of the state veterinarian.

I. All swine, 6 months of age or older, must be tested negative for pseudorabies and brucellosis by an official test within 30 days prior to sale. Swine originating from a brucellosis validated - pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 16:392 (May 1990), amended LR 18:839 (August 1992), LR 20:1258 (November 1994), LR 23:1493 (November 1997).

§907. Operation of Livestock Auction Markets

All swine which are sold or offered for sale in livestock auction markets must meet the general requirements of §111 and the following specific Pseudorabies/Brucellosis requirements:

1. All breeder and feeder swine moving to Louisiana auction markets from farms outside Louisiana must meet the requirements of §111.

2. All swine over 6 months of age, being sold at Louisiana livestock auction markets must be identified by an official swine back tag, placed on the animals' forehead and an official metal ear tag.

3. The market shall furnish the Livestock Sanitary Board's official representative a copy of each check-in slip, showing the name of the auction market, the date, the name and complete address of each consignor, and the official back tag numbers applied to the consignor's livestock. It shall be a violation of this regulation for anyone to consign livestock to a Louisiana livestock auction market and give a name and address that is not the name and address of the owner consigning the livestock to the auction market.

4. All swine 6 months of age or older arriving at a livestock auction market without an official negative test will have a blood sample drawn for testing. Swine originating from a brucellosis validated - pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement. Testing for pseudorabies and brucellosis