



*Geo Code
Ruled LAWS*

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*** ANNOTATIONS ARE CURRENT THROUGH JUNE 24, 2009. ***

LOUISIANA REVISED STATUTES
TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 15. PHYSICIANS, SURGEONS, AND MIDWIVES
PART I-B. RURAL PHYSICIAN SELF-REFERRAL

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 37:1306 (2009)

§ 37:1306. Legislative findings

The Legislature of Louisiana finds as follows:

- (1) Rural hospitals are an essential part of the healthcare delivery system for the state of Louisiana.
- (2) For many Louisiana residents, especially those without transportation, rural hospitals provide the only healthcare services readily available.
- (3) Among the essential services that rural hospitals make available to rural residents is around-the-clock emergency room care.
- (4) The development of healthcare facilities that provide services that duplicate those already available in the primary service areas of rural hospitals endangers their continued existence by reducing revenue and can lead to the closure or reduction of access to services in their twenty-four hour emergency rooms.
- (5) Patients in a rural hospital's primary service area with Medicare or private health insurance could be referred to a healthcare facility in which the physician has an ownership interest, thereby depriving the rural hospital of essential revenues, thereby endangering their continued existence.
- (6) The purpose of this legislation is to encourage innovative collaboration between and among rural hospitals and physicians in delivery of healthcare services in rural areas.

HISTORY: Acts 2006, No. 819, § 1, eff. Aug. 15, 2006.

NOTES:

LexisNexis (R) Notes:

Editor's Note

Acts 2006, No. 819, § 1, effective August 15, 2006, enacted Part I-B of Chapter 15 of Title 37, comprised of *R.S. 37:1306* through 1310.



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La. R.S. 37:1307 (2009)

§ 37:1307. Definitions

As used in this Part, the following terms shall have the following meanings unless the context requires otherwise:

(1) "Commercially reasonable terms and conditions" means those terms and conditions that would be reasonable to a prudent individual operating a business of similar type and size as a rural hospital even in the absence of referrals to the rural hospital or healthcare facility by a physician who owns, or whose immediate family member owns, an interest in the healthcare facility in which the rural hospital has been offered the opportunity to participate as an owner. The provisions of *42 U.S.C. 1395nn*, also known as "Stark II," the regulations promulgated by the Centers for Medicare and Medicaid Services, its predecessor or successor, to implement Stark II, and any regulatory guidance issued by the Centers for Medicare and Medicaid Services, its predecessor or successor, shall be considered in determining whether terms and conditions are commercially reasonable.

(2) "Department" means the Department of Health and Hospitals.

(3) "Healthcare facility" means an independent diagnostic testing facility, magnetic resonance imaging equipment or facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center. "Healthcare facility" shall not mean:

(a) A rural hospital that existed on April 1, 2006, or that replaces a rural hospital that existed on April 1, 2006.

(b) A rural hospital that is a replacement facility of a rural hospital that was damaged by Hurricane Rita or Hurricane Katrina.

(c) An entity owned or operated by the state of Louisiana or the United States.

(d) A physician's practice or a physician group practice, when such practice is owned and operated exclusively by physicians, for the purpose of providing healthcare services, and is not licensed or Medicare-certified as a rural health clinic.

(e) Any facility under development, including services provided by a mobile unit which is part of an existing facility, as of April 1, 2006, or operating as of April 1, 2006. A facility shall be considered under development if a representative of the facility has, prior to April 1, 2006, filed a license application with the department for the establish-

ment of the proposed healthcare facility, or can demonstrate that a minimum of twenty-five thousand dollars in architectural or engineering expenses have been incurred in connection with the proposed facility prior to April 1, 2006, or has received a certificate of occupancy.

(f) Any community health care clinic or rural health clinic.

(4) "Healthcare services" means magnetic resonance imaging services, computerized tomography services, Positron Emission Tomography scanner services, ultrasound services, any other imaging services that have become generally accepted methods of providing imaging services after April 17, 2006, as determined by the department, any services rendered by an ambulatory surgical center licensed by the department, or any services rendered by an outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center.

(5) "Immediate family member" means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of grandparent or grandchild.

(6) "Primary service area" means the smaller of either a radius of twenty-five miles from the rural hospital main campus or the number of postal zip codes, commencing with the rural hospital's zip code, in which seventy-five percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent twelve month Medicare cost reporting period. In determining the primary service area, each outpatient encounter and each inpatient stay shall be viewed as a separate patient, and the zip code attributable to the patient shall be the zip code of the patient at the time of the inpatient stay or outpatient encounter. Notwithstanding any other provision contained herein to the contrary, the term "primary service area" shall not include the cities of Alexandria, Baton Rouge, Bossier City, Covington, Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe, New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell, Thibodaux, or West Monroe.

(7) "Proposing party" means a person or entity that offers to enter into a joint venture with a rural hospital as well as any person or entity related to the proposing party by common ownership or control as such terms are defined for purposes of *42 C.F.R. 413.17*, or its successor provision.

(8) "Rural hospital" shall be defined as provided for in *R.S. 40:1300.143*, as such law existed on April 1, 2006.

HISTORY: Acts 2006, No. 819, § 1, eff. Aug. 15, 2006.

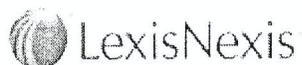
NOTES:

LexisNexis (R) Notes:

Amendment Notes

LSLI 2006 Regular Session Amendments.

In accordance with the revision authority set forth in *R.S. 24:201* et seq., the Louisiana State Law Institute redesignated various subdivisions of *R.S. 37:1307*, as enacted by Acts 2006, No. 819, § 1, in the following manner: the former (7) as (8) and the former (8) as (7). In addition, the LSLI made minor stylistic changes.



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PART 1-B. RURAL PHYSICIAN SELF-REFERRAL

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La. R.S. 37:1308 (2009)

§ 37:1308. Physician prohibitions; exceptions

A. Except as provided for in this Section, no physician licensed by the Louisiana State Board of Medical Examiners shall make a referral to any healthcare facility for the receipt of healthcare services if the referring physician or an immediate family member of the referring physician maintains a direct or indirect ownership interest in the healthcare facility. The prohibition contained in this Section shall apply only if both of the following conditions are met:

(1) The physician provides professional medical services within the primary service area of a rural hospital.

(2) The healthcare facility in which the physician or any immediate family member of the physician maintains a direct or indirect ownership is located within the primary service area of any rural hospital.

B. No healthcare facility in which a physician or any immediate family member of the physician maintains a direct or indirect ownership shall bill any patient, third party payer, or any other entity for healthcare services provided pursuant to a referral made in violation of this Section. Any healthcare facility that violates the prohibition contained in this Subsection shall refund any amount received for such services, with interest calculated at fourteen percent per annum from the date the payment was received by the healthcare facility.

C. No physician who refers a patient to a healthcare facility in contravention of this Section shall bill any patient, third party payer, or any other entity for professional services provided by the physician to the patient at the time during which the referral was made.

D. The prohibition contained in this Section shall not apply to the healthcare services furnished by a healthcare facility provided that the following criteria are met:

(1) The rural hospital in whose primary service area such facility is located is offered the option to participate in the ownership of the healthcare facility on commercially reasonable terms and conditions. Such offer shall be conveyed to the rural hospital in a written offer by the proposing party containing the terms and conditions of the offer. The rural hospital shall accept or reject such offer in writing within ninety days of receipt of the offer from the proposing party. In the case of acceptance by the rural hospital, the closing of the acquisition of such ownership interest shall occur within ninety days of the rural hospital's written acceptance of the offer unless such closing is delayed by mutual consent of the rural hospital and the proposing party. The rural hospital and the proposing party shall, at all times, act in good faith in accordance with the requirements of *Civil Code Article 1759*. The failure to act in good faith on the part of the rural hospital shall constitute a rejection by the rural hospital of such offer. The failure to act in good faith on the part of the

proposing party shall constitute a failure to satisfy the requirement that an offer be made to the rural hospital as specified above.

(2) The terms and conditions upon which the rural hospital is offered the option to participate in ownership of the healthcare facility is at a price that is commensurate with the interest offered to such rural hospital, whether such purchase price is in the form of cash or debt, and such interest offered is not less than a majority interest in such healthcare facility.

(3) The rural hospital in whose primary service area such facility is located declines the opportunity to participate in the ownership of the healthcare facility after being provided with an opportunity to review the following with respect to the proposed healthcare facility: a bona fide business plan, including a financial feasibility study; pro forma income and balance sheets; and a sources and uses of funds analysis. Any documentation provided to a rural hospital by a proposing party shall not be subject to the Public Records Law unless the rural hospital enters into a joint venture with the proposing party. In the event the rural hospital and proposing party do not enter into a joint venture, the rural hospital shall certify to the proposing party that all copies of materials provided by the proposing party have been destroyed.

HISTORY: Acts 2006, No. 819, § 1, eff. Aug. 15, 2006.

NOTES:

LexisNexis (R) Notes:

Amendment Notes

LSLI 2006 Regular Session Amendments.

In accordance with the revision authority set forth in *R.S. 24:201* et seq., the Louisiana State Law Institute substituted "Civil Code Article" for "C.C. Art." in (D)(1), as enacted by Acts 2006, No. 819, § 1.



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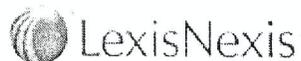
La. R.S. 37:1309 (2009)

§ 37:1309. Rules and regulations

A. The Louisiana State Board of Medical Examiners shall adopt rules and regulations that provide that violation of this Section or any rule adopted to promulgate this Section shall constitute grounds for suspension of the physician's license.

B. The department shall adopt rules and regulations that provide that violation of this Section or any rule adopted to enforce this Section shall constitute grounds for suspension or revocation of the healthcare facility's license or other permit to operate. Further, the department shall publish "primary service area" descriptions in the Louisiana Register by September 1, 2006, and provide annual updates thereafter.

HISTORY: Acts 2006, No. 819, § 1, eff. Aug. 15, 2006.



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La. R.S. 37:1310 (2009)

§ 37:1310. Enforcement

A. A rural hospital in whose primary service area a healthcare facility is located may bring an action for declaratory and injunctive relief, including a temporary restraining order, preliminary injunction and permanent injunction against any person or entity that violates the provisions of *R.S. 37:1308*. The court shall not require that a rural hospital post bond in such an action. Such action shall be brought in state court in the state judicial district in which the rural hospital is located. The rural hospital shall be entitled to attorney fees and court costs if the court rules that the person against which suit was filed violated the provisions of *R.S. 37:1308*.

B. A person that is billed for healthcare services in a manner inconsistent with *R.S. 37:1308* may bring an action for damages against the person that violated *R.S. 37:1308*. Such action shall be brought in state court in the state judicial district in which the plaintiff resides. The plaintiff shall be entitled to attorney fees, court costs, and damages in the amount of twice the amount billed if the court rules that the person against which suit was filed violated the provisions of *R.S. 37:1308*.

HISTORY: Acts 2006, No. 819, § 1, eff. Aug. 15, 2006.



LEXSEE 34 LR 90

LOUISIANA REGISTER

ISSUE: Volume 34, Number 1

ISSUE DATE: January 20, 2008

SUBJECT: RULES

AGENCY: Department of Health and Hospitals
Office of the Secretary
Bureau of Primary Care and Rural Health

34 LR 90

LOUISIANA ADMINISTRATIVE CODE CITATION: LAC 48:1.15901-15903

Title 48 PUBLIC HEALTH--GENERAL
Part 1. Public Health Services
Subpart 5. Primary Health Care Services
Chapter 159. Introduction

Primary Service Areas of Rural Hospitals

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, adopts LAC 48:1.15901-15903 as authorized by R.S. 37:1306-1310. This Rule is promulgated in accordance with Act 819.

Title 48 PUBLIC HEALTH--GENERAL

Part 1. Public Health Services

Subpart 5. Primary Health Care Services

Chapter 159. Introduction

§15901. Definitions

A. Act 819 (the Act) defines primary service area of a rural hospital as the smaller of either a radius of 25 miles from the rural hospital main campus or the number of postal zip codes, commencing with the rural hospital's zip code, in which 75 percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent 12 month Medicare cost reporting period. In determining the primary service area, each outpatient encounter and each inpatient stay shall be viewed as a separate patient, and the zip code attributable to the patient shall be the zip code of the patient at the time of the inpatient stay or outpatient encounter. The term primary service area does not include the cities of Alexandria, Baton Rouge, Bossier City, Covington, Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe, New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell, Thibodaux, or West Monroe.

B. Rural hospital shall be defined as provided for in R.S.40:1300.143, as such law existed on April 1, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 34:89 (January 2008).

§15902. Determination of Primary Service Area

A. Geographic Determination. As of July 6 2007, Louisiana has 51 rural hospitals. The 25 miles radius of each rural hospital has been identified by geocoding the zip code of each rural hospital and the 25 miles radius surrounding each of these hospitals. A map depicting the 25 miles radius surrounding each rural hospital is located at www.dhh.la.gov. In accordance with the Act, the Bureau of Primary Care and Rural Health will update the list of Louisiana's rural hospitals and their 25 mile radius annually and provide these updates on www.dhh.la.gov.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Primary Care and Rural Health, LR 34:89 (January 2008).

§15903. Determining the Smaller of the Two Primary Service Area Definitions

A. The Department of Health and Hospitals proposes the following process to determine if the hospital's primary service area is the smaller of either the 25 miles radius of the rural hospital or the number of postal zip codes, commencing with the rural hospital's zip code, in which 75 percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent 12 month Medicare cost reporting period.

1. Primary service area will be defined as the 25 mile radius of the rural hospital unless a formal request is made in writing to the Department of Health and Hospital's Bureau of Primary Care and Rural Health for a determination on the smaller of the two primary service area definitions. The request must include the legal name and address of the entity requesting the determination, the name and address of the rural hospital impacted by the request and the type of health-care facility that seeks to locate in the service area of the rural hospital. Requests for this primary service area determination will be sent to DHH-Bureau of Primary Care and Rural Health.

2. Within 30 days of receipt of the written request for a primary service area determination, the Bureau of Primary Care and Rural Health will request cost report data with service area zip codes from the rural hospital identified in the request. Cost report data will be required to be submitted to the Bureau of Primary Care and Rural Health within 30 days of the bureau's request.

3. Within 30 days of receipt of this cost report data, the Bureau of Primary Care and Rural Health will geocode and map the zip codes of the cost report data to assess the primary service area of the rural hospital. The results of this analysis will be provided to the party issuing the request for the primary service area determination and the rural hospital impacted by the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 34:89 (January 2008).

Roxane A. Townsend, M.D.
Secretary

0801#026

SENATE BILL NO. 570

BY SENATOR HINES

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AN ACT

To enact Part I-B of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:1306 through 1310, relative to rural hospitals and physician referral practices; to provide for the encouragement of collaboration between rural hospitals and physicians; to provide definitions; to provide standards for ethical referral by physicians; to provide prohibitions and exceptions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part I-B of Chapter 15 of Title 37 of the Louisiana Revised Statutes of 1950, comprised of R.S. 37:1306 through 1310, is hereby enacted to read as follows:

PART I-B. RURAL PHYSICIAN SELF-REFERRAL

§1306. Legislative findings

The Legislature of Louisiana finds as follows:

- (1) Rural hospitals are an essential part of the healthcare delivery system for the state of Louisiana.**
- (2) For many Louisiana residents, especially those without transportation, rural hospitals provide the only healthcare services readily available.**
- (3) Among the essential services that rural hospitals make available to rural residents is around-the-clock emergency room care.**
- (4) The development of healthcare facilities that provide services that duplicate those already available in the primary service areas of rural hospitals endangers their continued existence by reducing revenue and can lead to the closure or reduction of access to services in their twenty-four hour emergency rooms.**
- (5) Patients in a rural hospital's primary service area with Medicare or**

1 private health insurance could be referred to a healthcare facility in which the
2 physician has an ownership interest, thereby depriving the rural hospital of
3 essential revenues, thereby endangering their continued existence.

4 (6) The purpose of this legislation is to encourage innovative
5 collaboration between and among rural hospitals and physicians in delivery of
6 healthcare services in rural areas.

7 §1307. Definitions

8 As used in this Part, the following terms shall have the following
9 meanings unless the context requires otherwise:

10 (1) "Commercially reasonable terms and conditions" means those terms
11 and conditions that would be reasonable to a prudent individual operating a
12 business of similar type and size as a rural hospital even in the absence of
13 referrals to the rural hospital or healthcare facility by a physician who owns, or
14 whose immediate family member owns, an interest in the healthcare facility in
15 which the rural hospital has been offered the opportunity to participate as an
16 owner. The provisions of 42 U.S.C. §1395nn, also known as "Stark II," the
17 regulations promulgated by the Centers for Medicare and Medicaid Services,
18 its predecessor or successor, to implement Stark II, and any regulatory
19 guidance issued by the Centers for Medicare and Medicaid Services, its
20 predecessor or successor, shall be considered in determining whether terms and
21 conditions are commercially reasonable.

22 (2) "Department" means the Department of Health and Hospitals.

23 (3) "Healthcare facility" means an independent diagnostic testing
24 facility, magnetic resonance imaging equipment or facility, computerized
25 tomography equipment or facility, Positron Emission Tomography scanner or
26 facility, an ambulatory surgical center licensed by the department, or any
27 outpatient surgical facility required to be licensed by the department as an
28 ambulatory surgical center in order to obtain certification by Medicare as an
29 ambulatory surgical center. "Healthcare facility" shall not mean:

30 (a) A rural hospital that existed on April 1, 2006, or that replaces a rural

1 hospital that existed on April 1, 2006.

2 (b) A rural hospital that is a replacement facility of a rural hospital that
3 was damaged by Hurricane Rita or Hurricane Katrina.

4 (c) An entity owned or operated by the state of Louisiana or the United
5 States.

6 (d) A physician's practice or a physician group practice, when such
7 practice is owned and operated exclusively by physicians, for the purpose of
8 providing healthcare services, and is not licensed or Medicare-certified as a
9 rural health clinic.

10 (e) Any facility under development, including services provided by a
11 mobile unit which is part of an existing facility, as of April 1, 2006, or operating
12 as of April 1, 2006. A facility shall be considered under development if a
13 representative of the facility has, prior to April 1, 2006, filed a license
14 application with the department for the establishment of the proposed
15 healthcare facility, or can demonstrate that a minimum of twenty-five thousand
16 dollars in architectural or engineering expenses have been incurred in
17 connection with the proposed facility prior to April 1, 2006, or has received a
18 certificate of occupancy.

19 (f) Any community health care clinic or rural health clinic.

20 (4) "Healthcare services" means magnetic resonance imaging services,
21 computerized tomography services, Positron Emission Tomography scanner
22 services, ultrasound services, any other imaging services that have become
23 generally accepted methods of providing imaging services after April 17, 2006,
24 as determined by the department, any services rendered by an ambulatory
25 surgical center licensed by the department, or any services rendered by an
26 outpatient surgical facility required to be licensed by the department as an
27 ambulatory surgical center in order to obtain certification by Medicare as an
28 ambulatory surgical center.

29 (5) "Immediate family member" means husband or wife; birth or
30 adoptive parent, child, or sibling; stepparent, stepchild, stepbrother or

1 stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-
2 in-law, or sister-in-law; grandparent or grandchild; and spouse of grandparent
3 or grandchild.

4 (6) “Primary service area” means the smaller of either a radius of
5 twenty-five miles from the rural hospital main campus or the number of postal
6 zip codes, commencing with the rural hospital’s zip code, in which seventy-five
7 percent of a rural hospital’s patients reside, as determined by using data
8 derived from the hospital’s most recent twelve month Medicare cost reporting
9 period. In determining the primary service area, each outpatient encounter and
10 each inpatient stay shall be viewed as a separate patient, and the zip code
11 attributable to the patient shall be the zip code of the patient at the time of the
12 inpatient stay or outpatient encounter. Notwithstanding any other provision
13 contained herein to the contrary, the term “primary service area” shall not
14 include the cities of Alexandria, Baton Rouge, Bossier City, Covington,
15 Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe,
16 New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell,
17 Thibodaux, or West Monroe.

18 (7) “Rural hospital” shall be defined as provided for in R.S. 40:1300.143,
19 as such law existed on April 1, 2006.

20 (8) “Proposing party” means a person or entity that offers to enter into
21 a joint venture with a rural hospital as well as any person or entity related to
22 the proposing party by common ownership or control as such terms are defined
23 for purposes of 42 C.F.R. §413.17, or its successor provision.

24 §1308. Physician prohibitions; exceptions

25 A. Except as provided for in this Section, no physician licensed by the
26 Louisiana State Board of Medical Examiners shall make a referral to any
27 healthcare facility for the receipt of healthcare services if the referring
28 physician or an immediate family member of the referring physician maintains
29 a direct or indirect ownership interest in the healthcare facility. The
30 prohibition contained in this Section shall apply only if both of the following

1 conditions are met:

2 (1) The physician provides professional medical services within the
3 primary service area of a rural hospital.

4 (2) The healthcare facility in which the physician or any immediate
5 family member of the physician maintains a direct or indirect ownership is
6 located within the primary service area of any rural hospital.

7 B. No healthcare facility in which a physician or any immediate family
8 member of the physician maintains a direct or indirect ownership shall bill any
9 patient, third party payer, or any other entity for healthcare services provided
10 pursuant to a referral made in violation of this Section. Any healthcare facility
11 that violates the prohibition contained in this Subsection shall refund any
12 amount received for such services, with interest calculated at fourteen percent
13 per annum from the date the payment was received by the healthcare facility.

14 C. No physician who refers a patient to a healthcare facility in
15 contravention of this Section shall bill any patient, third party payer, or any
16 other entity for professional services provided by the physician to the patient at
17 the time during which the referral was made.

18 D. The prohibition contained in this Section shall not apply to the
19 healthcare services furnished by a healthcare facility provided that the
20 following criteria are met:

21 (1) The rural hospital in whose primary service area such facility is
22 located is offered the option to participate in the ownership of the healthcare
23 facility on commercially reasonable terms and conditions. Such offer shall be
24 conveyed to the rural hospital in a written offer by the proposing party
25 containing the terms and conditions of the offer. The rural hospital shall accept
26 or reject such offer in writing within ninety days of receipt of the offer from the
27 proposing party. In the case of acceptance by the rural hospital, the closing of
28 the acquisition of such ownership interest shall occur within ninety days of the
29 rural hospital's written acceptance of the offer unless such closing is delayed by
30 mutual consent of the rural hospital and the proposing party. The rural

1 hospital and the proposing party shall, at all times, act in good faith in
2 accordance with the requirements of C.C. Art. 1759. The failure to act in good
3 faith on the part of the rural hospital shall constitute a rejection by the rural
4 hospital of such offer. The failure to act in good faith on the part of the
5 proposing party shall constitute a failure to satisfy the requirement that an offer
6 be made to the rural hospital as specified above.

7 (2) The terms and conditions upon which the rural hospital is offered the
8 option to participate in ownership of the healthcare facility is at a price that is
9 commensurate with the interest offered to such rural hospital, whether such
10 purchase price is in the form of cash or debt, and such interest offered is not less
11 than a majority interest in such healthcare facility.

12 (3) The rural hospital in whose primary service area such facility is
13 located declines the opportunity to participate in the ownership of the
14 healthcare facility after being provided with an opportunity to review the
15 following with respect to the proposed healthcare facility: a bona fide business
16 plan, including a financial feasibility study; pro forma income and balance
17 sheets; and a sources and uses of funds analysis. Any documentation provided
18 to a rural hospital by a proposing party shall not be subject to the Public
19 Records Law unless the rural hospital enters into a joint venture with the
20 proposing party. In the event the rural hospital and proposing party do not
21 enter into a joint venture, the rural hospital shall certify to the proposing party
22 that all copies of materials provided by the proposing party have been
23 destroyed.

24 §1309. Rules and regulations

25 A. The Louisiana State Board of Medical Examiners shall adopt rules
26 and regulations that provide that violation of this Section or any rule adopted
27 to promulgate this Section shall constitute grounds for suspension of the
28 physician's license.

29 B. The department shall adopt rules and regulations that provide that

1 violation of this Section or any rule adopted to enforce this Section shall
 2 constitute grounds for suspension or revocation of the healthcare facility's
 3 license or other permit to operate. Further, the department shall publish
 4 "primary service area" descriptions in the Louisiana Register by September 1,
 5 2006, and provide annual updates thereafter.

6 §1310. Enforcement

7 A. A rural hospital in whose primary service area a healthcare facility
 8 is located may bring an action for declaratory and injunctive relief, including
 9 a temporary restraining order, preliminary injunction and permanent
 10 injunction against any person or entity that violates the provisions of R.S.
 11 37:1308. The court shall not require that a rural hospital post bond in such an
 12 action. Such action shall be brought in state court in the state judicial district
 13 in which the rural hospital is located. The rural hospital shall be entitled to
 14 attorney fees and court costs if the court rules that the person against which suit
 15 was filed violated the provisions of R.S. 37:1308.

16 B. A person that is billed for healthcare services in a manner
 17 inconsistent with R.S. 37:1308 may bring an action for damages against the
 18 person that violated R.S. 37:1308. Such action shall be brought in state court
 19 in the state judicial district in which the plaintiff resides. The plaintiff shall be
 20 entitled to attorney fees, court costs, and damages in the amount of twice the
 21 amount billed if the court rules that the person against which suit was filed
 22 violated the provisions of R.S. 37:1308.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Pharmacy Benefits Management
Program—Dispensing Fee**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$5,821,002 for FY 07-08, \$14,387,836 for FY 08-09 and \$14,819,471 for FY 09-10. In FY 07-08, \$1,360 (\$680 SGF and \$680 FED) is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$14,805,170 for FY 07-08, \$36,596,699 for FY 08-09 and \$37,694,600 for FY 09-10. In FY 07-08, \$680 is included for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the provisions governing the Pharmacy Benefits Management Program to increase the dispensing fee on prescription drugs (approximately 9,649,035 prescriptions/claims). It is anticipated that implementation of this proposed rule will increase expenditures in the Pharmacy Program by approximately \$20,624,812 for FY 07-08, \$50,984,535 for FY 08-09 and \$52,514,071 for FY 09-10.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips
Medicaid Director
0710#059

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Primary Care and Rural Health**

**Primary Service Areas of Rural Hospitals
(LAC 48:I.15901-15903)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, proposes to adopt LAC 48:I.15901-15903 as authorized by R.S. 37:1306-1310. This proposed Rule is promulgated in accordance with Act 819.

Act 819 (the Act) of the 2006 Regular Session of the Louisiana Legislature amended R.S. 37:1306-1310 relative to rural hospitals and physician referral practices to encourage innovative collaboration between and among rural hospitals and physicians in delivery of health care services in rural areas.

The Act requires the Department of Health and Hospitals to publish primary service area descriptions and provide annual updates thereafter.

In compliance with the directives of the Act, the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, proposes the

promulgation of this Rule to describe the primary service area of Louisiana's rural hospitals.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. Public Health Services

Subpart 5. Primary Health Care Services

Chapter 159. Introduction

§15901. Definitions

A. Act 819 (the Act) defines *primary service area* of a rural hospital as the smaller of either a radius of 25 miles from the rural hospital main campus or the number of postal zip codes, commencing with the rural hospital's zip code, in which 75 percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent 12 month Medicare cost reporting period. In determining the primary service area, each outpatient encounter and each inpatient stay shall be viewed as a separate patient, and the zip code attributable to the patient shall be the zip code of the patient at the time of the inpatient stay or outpatient encounter. The term *primary service area* does not include the cities of Alexandria, Baton Rouge, Bossier City, Covington, Hammond, Houma, Kenner, Lafayette, Lake Charles, Mandeville, Monroe, New Iberia, New Orleans, Opelousas, Ponchatoula, Ruston, Shreveport, Slidell, Thibodaux, or West Monroe.

B. *Rural hospital* shall be defined as provided for in R.S.40:1300.143, as such law existed on April 1, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 34:

§15902. Determination of Primary Service Area

A. Geographic Determination. As of July 6 2007, Louisiana has 51 rural hospitals. The 25 miles radius of each rural hospital has been identified by geocoding the zip code of each rural hospital and the 25 miles radius surrounding each of these hospitals. A map depicting the 25 miles radius surrounding each rural hospital is located at www.dhh.la.gov. In accordance with the Act, the Bureau of Primary Care and Rural Health will update the list of Louisiana's rural hospitals and their 25-mile radius annually and provide these updates on www.dhh.la.gov.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Primary Care and Rural Health, LR 34:

**§15903. Determining the Smaller of the Two Primary
Service Area Definitions**

A. The Department of Health and Hospitals proposes the following process to determine if the hospital's primary service area is the smaller of either the 25-miles radius of the rural hospital or the number of postal zip codes, commencing with the rural hospital's zip code, in which 75 percent of a rural hospital's patients reside, as determined by using data derived from the hospital's most recent 12 month Medicare cost reporting period.

1. *Primary service area* will be defined as the 25 mile radius of the rural hospital unless a formal request is made in writing to the Department of Health and Hospital's Bureau of Primary Care and Rural Health for a determination on the smaller of the two primary service area definitions. The

request must include the legal name and address of the entity requesting the determination, the name and address of the rural hospital impacted by the request and the type of healthcare facility that seeks to locate in the service area of the rural hospital. Requests for this primary service area determination will be sent to DHH-Bureau of Primary Care and Rural Health.

2. Within 30 days of receipt of the written request for a primary service area determination, the Bureau of Primary Care and Rural Health will request cost report data with service area zip codes from the rural hospital identified in the request. Cost report data will be required to be submitted to the Bureau of Primary Care and Rural Health within 30 days of the bureau's request.

3. Within 30 days of receipt of this cost report data, the Bureau of Primary Care and Rural Health will geocode and map the zip codes of the cost report data to assess the primary service area of the rural hospital. The results of this analysis will be provided to the party issuing the request for the primary service area determination and the rural hospital impacted by the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1306-1310.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 34:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Kristy Nichols, Bureau of Primary Care and Rural Health, P.O. Box 3118, Baton Rouge, LA 70821-3118. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, November 27, 2007, at 9:30 a.m. at the Department of Health and Hospitals, 628 N. Fourth Street, Conference Room 118, Baton Rouge, LA 70802. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Roxane A. Townsend, M.D.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Primary Service Areas of Rural Hospitals

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other

than cost of promulgation for FY 07-08. In FY 07-08, \$275.00 is included for the state's administrative expense for promulgation of this proposed rule and the final rule (\$137.50 SGF and \$137.50 federal funds).

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is anticipated that \$137.50 will be expended in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule forbids any physician to refer a patient to a health care facility, as defined, in which that physician has an ownership interest if the physician provides services within the service area of a rural hospital, or if the facility to which the patient is referred is in the service area of a rural hospital. Violation of this rule shall constitute grounds for suspension or revocation of a healthcare facility's license or other permit to operate.

The following provider types and businesses will be affected by the proposed rule: independent diagnostic testing facility, magnetic resonance imaging equipment of facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center.

The measure will have economic benefits for small rural hospitals by providing standards for ethical referrals by physicians who have ownership interest in one of the above mentioned facility types, thereby limiting duplication of services within the primary service areas of small rural hospitals and ensuring small rural hospitals are not deprived of essential revenues generated by those services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule places restrictions on certain types of health care providers (independent diagnostic testing facility, magnetic resonance imaging equipment or facility, computerized tomography equipment or facility, Positron Emission Tomography scanner or facility, an ambulatory surgical center licensed by the department, or any outpatient surgical facility required to be licensed by the department as an ambulatory surgical center in order to obtain certification by Medicare as an ambulatory surgical center) within the service areas of small rural hospitals.

Because violation of this rule shall constitute grounds for suspension or revocation of a health care facility's license or other permit to operate, the rule will limit revenue generation of these certain health care providers. In some cases it will be impossible for these services to be offered by any facility other than a small rural hospital.

Employment opportunities in rural communities that have or may result from the development of the facilities listed above will be affected.

Susan V. Stockstill
Assistant Budget Director
0710#064

Robert E. Hosse
Staff Director
Legislative Fiscal Office