

NOTICE OF INTENT

**Department of Health
Board of Pharmacy**

Durable Medical Equipment (DME) Permit
Change of Ownership (LAC 46:LIII.2403)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy hereby gives notice of its intent to amend §2403 of its rules relative to Durable Medical Equipment (DME) permit change of ownership procedures. The proposed Rule changes require a new application to be filed and a new permit obtained when a change in the identity of the natural person, partnership, or business entity which directly holds the DME permit has occurred or when there is a change in the person or entity's Federal Employer Identification Number (FEIN). The proposed Rule changes indicate that a DME permit is not transferrable, and requires the application to be submitted at least 15 days prior to closing the transfer of ownership. The proposed Rule changes clarify that nothing prohibits an entity from applying for a new permit in order to separate itself from actions which may have been committed by previous ownership.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 24. Limited Service Providers

Subchapter A. Durable Medical Equipment

§2403. Durable Medical Equipment (DME) Permit

A. - E.2. ...

3. Change of Ownership Procedures

a. A DME permit is not transferable
b. A new application shall be filed and a new permit obtained when a change in the identity of the natural person, partnership, or business entity which directly holds the permit has occurred or there is a change in the person or entity's Federal Employer Identification Number (FEIN).

c. The new owner shall submit an application to the board office at least 15 days before closing the transfer of ownership interests of said business.

d. An application for a new DME permit shall include the direct and first indirect level of ownership information. Any change in the first indirect level of ownership of 20 percent or more must be reported to the board within 30 days of the change.

e. Nothing in this section shall prohibit an entity from applying for a new DME permit in order to separate itself from actions which may have been committed by the previous ownership under the existing DME permit.

F. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 39:502 (March 2013), amended LR 50:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed rule amendment will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed rule amendment will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed rule amendment will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed rule amendment will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The proposed rule amendment will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed rule amendment will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed rule amendment will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. The proposed rule amendment will have no effect on employment and workforce development.

4. The Effect on Taxes and Tax Credits. The proposed rule amendment will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed rule amendment will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Analysis

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed rule amendment will lessen the requirement to apply for a new DME permit. It will require an application for a new DME permit to be submitted at least 15 days before closing the transfer of ownership and will require any change in the first indirect level of ownership of 20 percent or more to be reported to the Board within 30 days of the change.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed rule amendment will not establish less stringent schedules or deadlines for compliance or reporting requirements for small business. The proposed rule amendment will require an application for a new DME permit to be submitted at least 15 days prior to closing the transfer of ownership and will require any change in the first indirect level of ownership of 20 percent or more to be reported to the Board within 30 days of the change.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed rule amendment will have no effect on consolidation or simplification of compliance or reporting requirements for small business.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed rule amendment will have no effect on establishment of performance standards for small businesses to replace design or operational standards for small business.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses in the proposed rule amendment.

Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule

proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed rule amendment will have no effect on the staffing level requirements or qualifications required to provide the same level of service.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed rule amendment will have no impact on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed rule amendment will have no effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to M. Joseph Fontenot Jr., Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendment. The deadline for the receipt of all written comments is 12 p.m. on Monday, August 26, 2024.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule changes is scheduled for 9 a.m. on Monday, August 26, 2024 at the board office. During the hearing, all interested persons will be afforded an opportunity to submit comments and testimony, either verbally or in writing. The deadline for the receipt of all comments and testimony is 12 p.m. that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

M. Joseph Fontenot, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Durable Medical Equipment (DME) Permit Change of Ownership

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

Other than the cost of rulemaking, which is approximately \$1,500 in FY 25 related to publishing the proposed rule and final rule in the Louisiana Register, the proposed rule changes are not expected to result in costs or savings to state or local governmental units. The cost of rulemaking will be paid from self-generated funds.

The proposed rule changes require a new application to be filed and a new permit obtained when a change in the identity of the natural person, partnership, or business entity which directly holds the Durable Medical Equipment (DME) permit has occurred or when there is a change in the person or entity's

Federal Employer Identification Number (FEIN). The proposed rule changes indicate that a DME permit is not transferrable and requires the application to be submitted at least 15 days prior to closing the transfer of ownership. The proposed rule changes clarify that nothing prohibits an entity from applying for a new permit in order to separate itself from actions which may have been committed by previous ownership.

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

The proposed rule changes will result in a reduction in revenue collections for the Louisiana Board of Pharmacy (LBP) by eliminating the need for new DME permit applications (and commensurate fees) under certain circumstances related to change of facility ownership. While the actual amount of the reduction is indeterminable, it is anticipated to be approximately \$2,000 per year.

The proposed rule changes will eliminate the need for some DME permit applications due to a change of ownership. The application fee for a DME permit is \$200. Based on historical data, LBP estimates that the proposed rule change will eliminate the need for approximately 10 such applications per year, leading to an expected \$2,000 annual decrease in revenue, though the actual amount will vary depending on the number of applications which are no longer necessary under the proposed rule.

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

The proposed rule changes will benefit DME providers undergoing a change in ownership by eliminating the need for a new DME permit in most circumstances. Eliminating the need to apply for a permit due to a change of ownership will save the DME provider \$200 in application fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition or employment.

M. Joseph Fontenot, Jr.
Executive Director
2407#031

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office