



Louisiana Board of Pharmacy
3388 Brentwood Drive
Baton Rouge, Louisiana 70809-1700
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July 8, 2024

Senator Cameron Henry
President, Louisiana Senate
Via Email: APA.SenatePresident@legis.la.gov

Electronic Mail – Delivery Receipt Requested

Re: Report No. 1 of 3 for Regulatory Project 2024-06 ~ DME Permit Change of Ownership

Dear Senator Henry:

The Board seeks to amend Section 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

In connection with this regulatory project, the following items are appended:

- Notice of Intent
- Fiscal & Economic Impact Statement

As indicated in the solicitation, we will convene a public hearing at 9:00 a.m. on Monday, August 26, 2024 to receive public comments and testimony on these proposed rule changes. We will summarize those comments and our responses thereto in our next report to you. In the event you have any questions or need additional information about this project, please contact me directly at jfontenot@pharmacy.la.gov or 225.925.6481.

For the Board:

M. Joseph Fontenot Jr.
Executive Director

cc: Chair, Senate Health & Welfare Committee
Via Email: APA.S-H&W@legis.la.gov
Speaker, House of Representatives
Via Email: APA.HouseSpeaker@legis.la.gov
Chair, House Health & Welfare Committee
Via Email: APA.H-HW@legis.la.gov
Editor, *Louisiana Register*
Via Email: Reg.Submission@la.gov
Reference File

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. A duplicate or replacement permit shall be issued upon the written request of the permit holder and payment of the required fee. A duplicate or replacement permit shall not serve or be used as an additional or second permit.~~

~~4. A DME provider changing ownership shall notify the board in writing 15 calendar days prior to the transfer of ownership.~~

~~a. A change of ownership shall be evident under the following circumstances:~~

~~i. sale;~~

~~ii. death of a sole proprietor;~~

~~iii. the addition or deletion of one or more partners in a partnership;~~

~~iv. bankruptcy sale; or~~

~~v. a 50 percent, or more, change in ownership of a corporation, limited liability company, or association since the issuance of the original DME permit.~~

~~b. The new owner shall submit a properly completed application form with all required attachments and appropriate fee to the board.~~

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 NON-GOVERNMENTAL 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.

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

Person Preparing Statement:	<u>M. Joseph Fontenot Jr. Executive Director</u>	Dept.:	<u>Dept. of Health</u>
Phone:	<u>225.925.6481</u>	Office:	<u>Board of Pharmacy Durable Medical Equipment (DME) Permit Change of Ownership</u>
Return Address:	<u>3388 Brentwood Drive Baton Rouge, LA 70809</u>	Rule Title:	<u>Ownership</u>
		Date Rule Takes Effect:	<u>Upon promulgation November 20, 2024 (est.)</u>

**SUMMARY
(Use complete sentences)**

In accordance with Section 951 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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 NON-GOVERNMENTAL 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 changes will have no effect on competition or employment.

M. J. Fontenot Jr.

Signature of Head or Designee

M. Joseph Fontenot Jr., Executive Director

Typed Name & Title of Agency Head or Designee

July 03, 2024

Date of Signature

Alice Thomas
Legislative Fiscal Officer or Designee

7/08/2024

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed rule changes in Section 2403 establish that an application for a DME permit is to be filed and a new permit obtained when there is a change in the identity of the natural person, partnership, or business entity which directly holds the permit or when there is a change in the person or entity's Federal Employer Identification Number (FEIN). The proposed rule changes require a new application to be filed at least 15 days before closing the transfer of ownership interests, require the application to include the direct and first indirect level of ownership information, and 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. The proposed rule changes clarify that nothing prohibits an entity from applying for a new pharmacy permit in order to separate itself from actions of the previous ownership.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Following recent rule changes made to pharmacy change of ownership procedures, LBP determined it appropriate to amend Section 2403 of its rules relative to DME.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed Rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

LBP has allocated \$1,500 for printing the proposed and final rule in the Louisiana Register. LBP operates on self-generated funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ YES. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

LBP operates on self-generated funds, and they have determined the proposed rule changes are in the public's best interest.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 25	FY 26	FY 27
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$1,500	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	\$0	\$0	\$0
EQUIPMENT	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
TOTAL	\$1,500	\$0	\$0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A. 1.," including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

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.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 25	FY 26	FY 27
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$1,500	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$0	\$0	\$0
OTHER (Specify)	\$0	\$0	\$0
TOTAL	\$1,500	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

LBP has sufficient self-generated funds available to implement the proposed rule changes.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule changes will not result in costs or savings to local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

The proposed rule changes will not impact sources of funding of local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 25	FY 26	FY 27
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	(\$2,000)	(\$2,000)	(\$2,000)
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$0	\$0	\$0
LOCAL FUNDS	\$0	\$0	\$0
TOTAL	(\$2,000)	(\$2,000)	(\$2,000)

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

LBP anticipates the proposed rule changes will result in a reduction in revenue collections for 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 license 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 changes will eliminate the need for approximately 10 such applications per year at \$200 per application, 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 changes.

The proposed rule changes will not affect revenue collections of local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

- A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

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.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

The proposed rule changes will not impact a licensee's receipts or revenue.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

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