

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Facility Need Review
Outpatient Abortion Facilities
(LAC 48:I.Chapter 125)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.12501 and §12503 and to repeal §12524 in the Medical Assistance Program as authorized by R.S. 36:254. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the Rule governing the Facility Need Review Program (FNR) in order to adopt provisions for the inclusion of outpatient abortion facilities in the FNR process (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the Facility Need Review Program to remove outpatient abortion facilities from the FNR process (*Louisiana Register*, Volume 41, Number 7). The department subsequently amended the provisions of the July 1, 2015 Emergency Rule in order to correct the formatting of §12503 as a result of the promulgation of a January 20, 2015 Rule governing the FNR process (*Louisiana Register*, Volume 41, Number 10). This

proposed Rule is being promulgated to continue the provisions of the October 20, 2015 Emergency Rule.

Title 48

**PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 5. Health Planning**

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. ...

Outpatient abortion facility~~any outpatient facility licensed by the Department of Health and Hospitals pursuant to R.S. 40:2175.1 et seq, or its successor licensing statute~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services

Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010),
LR 38:1961 (August 2012), LR 41:135 (January 2015), LR 42:

§12503. General Information

A. - B. ...

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 3. ...

4. hospice providers or inpatient hospice facilities;

and

5. ~~outpatient abortion facilities; and~~ pediatric day health care facilities.

6. ~~pediatric day health care facilities~~ Repealed.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ~~ICFs-DD~~ ICFs/ID, ADHC providers, hospice providers, ~~outpatient abortion facilities,~~ and pediatric day health care centers that meet one of the following conditions:

1. - 3. ...

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012; or

5. ~~outpatient abortion facilities which were~~

~~licensed by the department on or before May 20, 2012;~~

~~or~~ pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:

a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by March 1, 2014;

b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;

c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and

d. becomes licensed as a PDHC by the department no later than December 31, 2014.

~~6. pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:~~

~~a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by~~

~~March 1, 2014;~~

~~_____ b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;~~

~~_____ c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and~~

~~_____ d. becomes licensed as a PDHC by the department no later than December 31, 2014.~~ 6. - 6.d. Repealed.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:136 (January 2015), LR 42:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12524. Outpatient Abortion Facilities

~~A. No outpatient abortion facility shall be licensed to operate unless the FNR Program has granted an approval for the issuance of an outpatient abortion facility license. Once the FNR Program approval is granted, an outpatient abortion facility is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.~~

~~B. The service area for proposed or existing outpatient abortion facilities is the DHH region where the facility is or will be licensed.~~

~~C. Determination of Need/Approval~~

~~1. The department will review the application to determine if there is a need for an additional outpatient abortion facility in the DHH region.~~

~~2. The department shall grant FNR approval only if the FNR application, the data contained in the application and other evidence effectively establishes the probability of serious, adverse consequences to individuals' ability to access outpatient abortion facility services if the facility is not allowed to be licensed.~~

~~3. In reviewing the application, the department may consider, but is not limited to, evidence showing:~~

~~a. the number of other licensed outpatient abortion facilities in the DHH Region; and~~

~~b. individuals' inability to access outpatient abortion clinic services.~~

~~4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to individuals' ability to access outpatient abortion clinic services if the facility is not allowed to be licensed. The department shall not grant any FNR approvals if the applicant fails to provide such data and evidence.~~

~~D. Applications for approvals of outpatient abortion facilities submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of facilities shall expire if these aspects of the application are altered or changed.~~

~~E. FNR approvals for outpatient abortion facilities are non-transferrable and are limited to the location and the name of the original licensee.~~

~~1. An outpatient abortion facility undergoing a change of location within the same DHH region in which it is licensed shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with~~

~~the name and new location. An outpatient abortion facility undergoing a change of location outside of the DHH Region in which it is currently licensed shall submit a new FNR application and fee and undergo the FNR approval process.~~

~~2. An outpatient abortion facility undergoing a change of ownership shall submit a new FNR application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.~~

~~3. FNR Approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.~~

~~F. Outpatient abortion facilities shall have six months from the date of FNR approval to obtain final architectural plan approval and shall have one year from the date of FNR approval within which to become licensed. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant. Inappropriate zoning is not a basis for extension. Failure to meet the timeframes in this Section shall result in an automatic expiration of the FNR approval.~~Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1961 (August 2012), repealed LR 42:

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 and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have

no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821, or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary