

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

**Hospital Licensing Standards
(LAC 48:I.Chapter 93)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 as authorized by R.S. 36:254 and R.S. 40:2100-2115. 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, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of hospitals in order to clarify the requirements that licensed hospitals shall: 1) be primarily engaged in providing inpatient care and services to inpatients, and 2) ensure that dietary services provided through a contract with a food delivery service meet the same standards as hospitals that provide in-house dietary services to patients.

**Title 48
PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Licensing**

Chapter 93. Hospitals

Subchapter A. General Provisions

§9301. Purpose

- A. The purpose of the hospital laws, rules and ~~standards~~

regulations is to provide for the development, establishment and enforcement of standards for the care of individuals in hospitals and for the construction, maintenance and operation of hospitals which shall promote safe and adequate treatment of individuals in hospitals.

~~1. Except as otherwise provided herein, hospitals shall provide directly or under arrangements the following professional departments, services, facilities and functions:~~

- ~~a. organization and general services;~~
- ~~b. nursing services;~~
- ~~c. pharmaceutical services;~~
- ~~d. radiological services;~~
- ~~e. laboratory services;~~
- ~~f. food and dietetic services;~~
- ~~g. medical record services;~~
- ~~h. quality assessment and improvement;~~
- ~~i. physical environment;~~
- ~~j. infection control;~~
- ~~k. respiratory care services.~~

~~2. Except as otherwise provided herein, hospitals may provide the following optional services directly or under arrangements:~~

- ~~a. surgical services;~~

- ~~b. anesthesia services;~~
- ~~c. nuclear medicine services;~~
- ~~d. outpatient services;~~
- ~~e. rehabilitation services;~~
- ~~f. psychiatric services;~~
- ~~g. obstetrical and newborn services;~~
- ~~h. pediatric services;~~
- ~~i. emergency services.~~ 1. - 2.i. Repealed.

B. A hospital shall be licensed in accordance with state law, rules and regulations adopted and established by the state agency responsible for the licensing of hospitals.

C. Primarily Engaged

1. Hospitals shall be primarily engaged, as defined by this Rule and determined by the Department of Health, in providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

- a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

2. Licensed hospitals designated as psychiatric hospitals and critical access hospitals as defined by the Code of Federal Regulations, and licensed hospitals designated as rural hospitals as defined by R.S. 40:1189.3, are not subject to the primarily engaged requirements.

3. In reaching a determination as to whether or not an entity is primarily engaged in providing inpatient hospital services to inpatients of a hospital, the Department of Health will evaluate the total facility operations and consider multiple factors, subject to paragraph C.4 below.

a. Total Facility Operations. In evaluating the total facility operations, the department will review the actual provision of care and services to two or more inpatients, and the effects of that care, to assess whether the care provided meets the needs of individual patients by way of patient outcomes.

b. Multiple Factors. The factors that the department will consider include, but are not limited to:

i. the entity's average daily census (ADC);

ii. the average length of stay (ALOS);

iii. the number of off-site campus outpatient locations operated by the entity;

iv. the number of provider-based emergency departments for the entity;

v. the number of inpatient beds related to the size of the entity and the scope of the services offered;

vi. the volume of outpatient surgical procedures compared to the inpatient surgical procedures (if surgical services are provided);

vii. staffing patterns; and

viii. patterns of ADC by day of the week.

4. Notwithstanding any other provision of this rule, an entity shall not be considered to be primarily engaged in providing inpatient hospital services to inpatients of a hospital if it has an ADC of less than two, or an average length of stay of less than two.

5. Hospitals are not required to have a specific inpatient bed to outpatient bed ratio in order to meet the definition of primarily engaged.

a. If the hospital has an emergency department (ED), the number of hospital inpatient beds shall be greater than the number of ED beds, with a ratio of not less than 2:1.

D. Except as otherwise provided herein, hospitals shall provide directly or under arrangements the following professional departments, services, facilities and functions

which are essential to establish whether a facility is primarily engaged in providing inpatient hospital services:

1. organization and general services;
2. nursing services;
3. pharmaceutical services;
4. radiological services;
5. laboratory services;
6. nutritional and therapeutic dietetic services;
7. medical record services;
8. quality assessment and improvement;
9. physical environment;
10. infection control;
11. respiratory care services.

E. Except as otherwise provided herein, hospitals may provide the following optional services directly or under arrangements:

1. surgical services;
2. anesthesia services;
3. nuclear medicine services;
4. outpatient services;
5. rehabilitation services;
6. psychiatric services;
7. obstetrical and newborn services;

8. pediatric services;

9. emergency services.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2399 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

§9303. Definitions

A. ...

Average Daily Census (ADC)-calculated by adding the midnight daily census for each day of the 12-month period and dividing the total number by the number of days in the year. In calculating the ADC for purposes of determining whether an entity meets the requirements of primarily engaged, LDH may utilize a period of between three months and 12 months.

Average Length of Stay (ALOS)-the average of the number of inpatient days a person is in the hospital. ALOS is calculated by dividing the total inpatient days by the total

discharges during a specified period of time, which results in an average number of days in the hospital for each person admitted. In calculating ALOS, LDH may utilize a period of between three months and 12 months.

~~Department-Louisiana Department of Health and Hospitals.~~

Food Delivery Services-the transportation of the nutritional and therapeutic dietetic services by a food management company that is delivered to the hospital and served to the patients of the hospital.

Food Management Company-an off-site vendor who provides nutritional and therapeutic dietetic services to the hospital through a contractual agreement and that is required to meet the same standards for food and dietetic services as provided by the hospital directly.

~~Hospital-any institution, place, building, or agency, public or private, whether for profit or not, maintaining and operating facilities, 24 hours a day, seven days a week, having a minimum of 10 licensed beds, or more, properly staffed and equipped for the diagnosis, treatment and care of persons admitted for overnight stay or longer who are suffering from~~

~~illness, injury, infirmity or deformity or other physical or mental condition for which medical, surgical and/or obstetrical services would be available and appropriate~~ having staff and equipment sufficient to meet patient needs, and providing hospital services, care and treatment for injured, disabled or sick persons who are admitted with the expectation that he or she will require hospital care that is expected to span at least two midnights. Except as otherwise noted in these licensing regulations, a hospital shall be primarily engaged in providing inpatient services to inpatients, by or under the supervision of licensed physicians. ~~This~~ The term hospital does not include the following:

a. - b. ...

c. persons, schools, institutions, or organizations engaged in the care and treatment of ~~the mentally retarded~~ children with intellectual disabilities and which are required to be licensed by the provisions of the Developmental Disability Law, R.S. ~~28:421-427~~28:451.1 et seq.;

d. - e. ...

f. infirmaries or clinics maintained solely by any college or university exclusively for treatment of faculty, students and employees; or

g. an urgent care clinic.

NOTE: Free standing emergency departments (or an entity that holds itself out to the public mainly as a free standing emergency department) shall not be licensed as a hospital.

Inpatient-a person who admitted to a hospital with the status of inpatient for purposes of receiving hospital services with the expectation that he/she will require hospital care expected to span at least two nights and occupy a bed even though it is later determined that the patient can be discharged or transferred to another hospital and not actually use a hospital bed overnight. Persons in hospital observation status are not inpatients.

Inpatient Hospital Services or Inpatient Service-
includes, but is not limited to, the following services provided to inpatients of the hospital as either: diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

a. bed and board;

b. 24-hour nursing services and other related services;

c. use of hospital facilities;

d. medical social services;

e. drugs, biologicals, supplies, appliances, and equipment;

f. certain other diagnostic or therapeutic services;

g. medical or surgical services provided by certain interns or residents-in-training; and

h. transportation services, including transport by ambulance.

Licensed Practical Nurse (LPN) ~~any~~ person licensed to practice practical nursing ~~and who is licensed to practice~~ by the Louisiana State Board of Practical Nurse Examiners and is practicing within his/her scope of practice, training, experience, and competency.

Nutritional and Therapeutic Dietetic Services-the provision of a nourishing, palatable, well-balanced diet that meets the patient's daily nutritional and special dietary needs in accordance with the licensed practitioner's prescribed plan of care, and taking into consideration the preferences of each patient.

Office of the Secretary—office of the person serving
as the Secretary of the Department of Health ~~and Hospitals~~.

Primarily Engaged—a hospital is directly providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Note: Having the capacity or potential to provide inpatient hospital services is not the equivalent of actually providing such care.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2400 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:513 (March

2010), LR 37:3028 (October 2011), LR 38:1413 (June 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

Subchapter G. ~~Food~~Nutritional and Therapeutic Dietetic Services

§9377. General Provisions

A. There shall be an organized dietary service that provides nutritional ~~care~~and therapeutic dietetic services to patients. All hospital contracts or arrangements for off-site food preparation shall be with a provider who is licensed by the department's healthcare division or operating under the authority of the federal government.

B. ...

1. The hospital ~~must~~shall provide written notices to the department's Health Standards Section and to the department's Office of Public Health within 10 calendar days of the effective date of the contract.

2. The outside food management company must possess a valid Department of Health~~and Hospitals~~, Office of Public Health retail food permit and meet all of the requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the most current version of the provisions found in Title 51, ~~Part XXIII, Chapter 19, §1911~~Public Health-Sanitary Code.

3. Either the hospital or the food management company ~~must~~ shall employ or contract with a registered dietician who serves the hospital on a full-time, part-time, or consultant basis to ensure that the nutritional needs of the patients are met in accordance with the licensed practitioners' orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1413 (June 2012, amended by the Department of Health, Bureau of Health Services Financing, LR 45:

§9379. Organization and Staffing

A. ~~Food~~Nutritional and therapeutic dietetic services shall be under the supervision of a registered dietitian, licensed to practice in Louisiana, who is employed either full time, part time or on a consulting basis. If the registered dietitian is not full time, there shall be a full time dietary manager.

B. - B.4.a. ...

C. The registered dietitian shall be responsible for assuring that quality nutritional ~~care is~~ and therapeutic dietetic services are provided to patients. This shall be accomplished by providing and supervising the nutritional aspects of patient care including nutritional screening, nutritional assessments of patients at nutritional risk, patient education related to nutritional intake and diet therapy, and recording information in the medical record regarding the nutritional status and care of the patient and the patient's response to the therapeutic diet.

D. The hospital shall employ sufficient support personnel, competent in their respective duties, to carry out the function of the dietary service adequate to meet the nutritional and therapeutic dietetic needs of the patients in accordance with the prescribed plan of care.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

§9383. Sanitary Conditions

A. ...

B. All food shall be transported, stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 41~~FF~~ degrees Fahrenheit, except when being prepared and served. Refrigerator temperatures shall be maintained at 41~~FF~~ degrees Fahrenheit or below, freezers at 0~~FF~~ degrees Fahrenheit or below.

1. For those hospitals that contract with a food delivery service for nutritional and therapeutic dietary services, food shall be transported only via vehicles designed, equipped, and maintained solely for the purpose of the transportation and delivery of food by the food management company.

C. Hot foods shall leave the kitchen or steam table at or above 140~~FF~~ degrees Fahrenheit, and cold foods at or below 41~~FF~~ degrees Fahrenheit. In-room delivery temperatures shall be maintained at 120~~FF~~ degrees Fahrenheit or above for hot foods and 50~~FF~~ degrees Fahrenheit or below for cold items, except for milk which shall be stored at 41~~FF~~ degrees Fahrenheit. Food shall be transported to the patients' rooms in a manner that protects it from contamination, while maintaining required

temperatures.

1. For those hospitals who contract with a food management company for nutritional and therapeutic dietary services, transportation and delivery of such food shall be transported and served in accordance with §9383.A-C.

D. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes maintaining a water temperature in dish washing machines at 140°F degrees Fahrenheit during the wash cycle (or according to the manufacturer's specifications or instructions) and 180°F degrees Fahrenheit for the final rinse. Low temperature machines shall maintain a water temperature of 120°F degrees Fahrenheit with 50 parts per million (ppm) of hypochlorite (household bleach) on dish surfaces. For manual washing in a 3 compartment sink, a wash water temperature of 75°F degrees Fahrenheit with 50 ppm of hypochlorite or equivalent, or 12.5 ppm of iodine; or a hot water immersion at 170°F degrees Fahrenheit for at least 30 seconds shall be maintained. An approved lavatory shall be convenient and equipped with hot and cold water tempered by means of a mixing valve or combination faucet for dietary services staff use. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least 15 seconds without the

need to reactivate the faucet. Effective with the promulgation of these requirements, an additional lavatory shall be provided in the dishwasher area in newly constructed hospitals or in existing hospitals undergoing major dietary alterations.

1. For those hospitals that contract nutritional and therapeutic dietary services, such shall be conducted in accordance with the State Sanitary Code for the preparing, cleaning, sanitation, and storage of equipment and utensils.

E. - H. ...

I. The physical environment in which all food preparation takes place shall be kept clean and ~~in good repair~~ operating condition.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2414 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

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 a positive effect on the stability of

the family as described in R.S. 49:972 by ensuring a safe and effective operation of licensed hospitals.

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. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on May 30, 2019.

Pursuant to R.S. 49:983 the Office of the State Register may make technical changes to proposed rule submissions in preparing the Louisiana Register and Louisiana Administrative Code.

The department will conduct a public hearing at 9:30 a.m. on May 30, 2019 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. Parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Rebekah E. Gee MD, MPH

Secretary