

NOTICE OF INTENT

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

**Hospice Licensing Standards
(LAC 48:I.8201, 8259, and 8261)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.8201 and adopt §8259 and §8261 as authorized by R.S. 36:254 and R.S. 40:2181-2192. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency. House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature requires the department to amend the administrative Rule governing the geographic location of hospice providers to authorize such providers to serve patients in any parish within a 50 mile radius of their geographic location. In compliance with Act 367 and HR 152, the Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency by clergy, immediate family members and other designated persons,

and to revise the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 82. Minimum Standards for Licensure of Hospice

Agencies

Subchapter A. General Provisions

§8201. Definitions

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Geographic Area—area around location of licensed agency that includes any parish within 50 mile radius of the hospice premises. Each hospice shall designate the geographic area in which the agency will provide services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2257 (December 1998), amended by the Department of Health, Bureau of

Health Services Financing, LR 44:588 (March 2018), LR 46:344
(March 2020), LR 47:1307 (September 2021), LR 49:

Subchapter E. Hospice Inpatient Facility

**§8259. Visitation by Members of the Clergy during a Declared
Public Health Emergency**

A. For purposes of §8259 and §8261, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers, R.S. 29:790 et seq., or current law.

B. For purposes of this Section, clergy shall be defined as follows:

1. a minister, priest, preacher, rabbi, imam, Christian Science practitioner; or
2. other similar functionary of a religious organization; or
3. an individual reasonably believed to be such a clergy member by the person consulting him.

C. For purposes of §8259 and §8261, patient shall mean a patient of a licensed inpatient hospice in Louisiana, or the legal or designated representative of the patient.

D. A licensed inpatient hospice shall comply with any federal law, regulation, requirement, order or guideline regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8259.E-H shall be preempted by any federal statute, regulation, requirement, order, or guideline

from a federal government agency that requires an inpatient hospice to restrict patient visitation in a manner that is more restrictive than the rules.

E. An inpatient hospice shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in an inpatient hospice during a declared PHE.

F. An inpatient hospice shall comply with an executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in an inpatient hospice during a declared PHE.

G. The provisions of this Section regarding visitation by members of the clergy shall apply to all inpatient hospice facilities licensed by the Department of Health (LDH).

H. Subject to the requirements of §8259.D-F, each inpatient hospice shall allow a member of the clergy to visit patients of an inpatient hospice during a declared PHE when a patient, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. Each inpatient hospice shall have a written policy and procedure addressing visitation by members of the clergy. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The inpatient hospice

shall provide a link to an electronic copy of the policy and procedure to a member of the clergy, upon request.

2. An inpatient hospice's policy and procedure regarding clergy visitation may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the inpatient hospice, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical consideration of an individual patient.

3. An inpatient hospice's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention (CDC), as applicable;

i. if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the inpatient hospice shall utilize those methods and protocols;

b. that a clergy member may not be allowed to visit an inpatient hospice patient if such clergy member has obvious signs or symptoms of an infectious agent or infectious

disease, or if such clergy member tests positive for an infectious agent or infectious disease;

c. that a clergy member may not be allowed to visit an inpatient hospice if the clergy member refuses to comply with the provisions of the inpatient hospice's policy and procedure or refuses to comply with the inpatient hospice's reasonable time, place, and manner restrictions;

d. that a clergy member may be required to wear personal protective equipment (PPE) as determined appropriate by the inpatient hospice, considering the patient's medical condition or clinical considerations;

i. the inpatient hospice's discretion PPE may be made available by the inpatient hospice to clergy members;

e. that an inpatient hospice's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

f. that the patient shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with a member of the clergy; and

g. that an inpatient hospice's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding

visitation in an inpatient hospice issued by any federal government agency during a declared PHE.

4. An inpatient hospice shall submit a written copy of its visitation policies and procedures on clergy member visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the inpatient hospice shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An inpatient hospice shall within 24 hours after establishing its written policies and procedures on clergy member visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

§8561. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency

A. For the purposes of this Section, immediate family member shall mean the following in order of priority:

1. spouse;
2. natural or adoptive parent, child, or sibling;
3. stepparent, stepchild, stepbrother, or stepsister;

4. father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, or sister-in-law;
5. grandparent or grandchild;
6. spouse of a grandparent or grandchild; or
7. legal or designated representative of the patient.

B. A licensed inpatient hospice shall comply with any federal law, regulation requirement, order, or guideline regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8561.C-F shall be preempted by any federal statute, regulation, requirement, order or guideline from a federal government agency that requires an inpatient hospice to restrict patient visitation in a manner that is more restrictive than the rules.

C. Inpatient hospices shall comply with any Louisiana SHO order or emergency notice regarding visitation in inpatient hospices during a declared PHE.

D. Inpatient hospices shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in an inpatient hospice during a declared PHE.

E. The provisions of this Section regarding visitation by immediate family members of the patient and other designated persons, shall apply to all inpatient hospices licensed by LDH.

F. Subject to the requirements of §8561.B-D, each inpatient hospice shall allow immediate family members and other designated persons to visit a patient of the inpatient hospice during a declared PHE when a patient, or his legal or designated representative, requests a visit with immediate family members and other designated persons, subject to the following conditions and requirements:

1. Each inpatient hospice shall have a written policy and procedure addressing visitation by immediate family members and other designated persons. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The inpatient hospice shall provide a link to an electronic copy of the policy and procedure to immediate family members and other designated persons, upon request.

2. An inpatient hospice's policy and procedure regarding visitation by immediate family members and other designated persons may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the inpatient hospice, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical considerations of an individual patient.

3. An inpatient hospice's policy and procedure on visitation by immediate family members and other designated persons, at a minimum, requires the following:

a. that immediate family members of the patient and other designated persons, may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the CDC, as applicable;

i. if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the inpatient hospice shall utilize those methods and protocols;

b. that an immediate family member or other designated person may not be allowed to visit an inpatient hospice inpatient if such immediate family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such immediate family member or other designated person tests positive for an infectious agent or infectious disease;

c. that an immediate family member or other designated person may not be allowed to visit an inpatient hospice patient if the immediate family member or other designated person refuses to comply with the provisions of the inpatient hospice's policy and procedure, or refuses to comply

with the inpatient hospice's reasonable time, place, and manner restrictions;

d. that the patient and immediate family members and other designated persons may be required to wear PPE as determined appropriate by the inpatient hospice, considering the patient's medical condition or clinical consideration;

i. at the inpatient hospice's discretion, PPE may be made available by the inpatient hospice to immediate family members and other designated persons;

e. that an inpatient hospice's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

f. that the patient and an immediate family member or other designated person, shall have the right to consensual, nonsexual physical contact such as hand holding or hugging; and

g. that an inpatient hospice's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE.

4. An inpatient hospice shall submit a written copy of its policies and procedures on immediate family member or

other designated person visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the inpatient hospice shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An inpatient hospice shall within 24 hours after establishing its written policies and procedures on immediate family member or other designated person visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by allowing clergy, immediate family members, and other designated persons to visit hospice patients during a declared public health emergency.

Poverty Impact Statement

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.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

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.

Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries

regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person Preparing Statement: Veronica Dent Dept.: Health
Phone: 342-3238 Office: Bureau of Health Services Financing
Return Address: P.O. Box 91030 Rule Title: Hospice Licensing Standards
Baton Rouge, LA
Date Rule Takes Effect: November 20, 2023

SUMMARY
(Use complete sentences)

In accordance with Section 961 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)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,512 will be expended in FY 23-24 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 not affect federal revenue collections as this measure has no impact on licensing fees.

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

This proposed rule amends the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency (PHE) by clergy, immediate family members and other designated persons, in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. Additionally, the proposed rule revises the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises, in compliance with House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule will be beneficial to hospice patients by allowing visits by clergy, family members and other persons during a declared PHE. It is anticipated that implementation of this proposed rule will not result in costs to hospice providers in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by establishing standards for visitation during a declared PHE and clarifying the geographic service area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes
Signature of Agency Head or Designee

Tasheka Dukes, RN
Deputy Assistant Secretary
LDH Health Standards Section
Typed Name & Title of Agency Head or Designee

8/8/23
Date of Signature

Patrice Thomas, Deputy Fiscal Officer
Legislative Fiscal Officer or Designee

8/09/2023
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).

This proposed rule amends the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency (PHE) by clergy, immediate family members and other designated persons, in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. Additionally, the proposed rule revises the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises, in compliance with House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature.

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

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish minimum requirements for visitation, including during a declared public health emergency. House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature requires the department to amend the administrative Rule governing the geographic location of hospice providers to authorize such providers to serve patients in any parish within a 50 mile radius of their geographic location. In compliance with Act 367 and HR 152, the Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency by clergy, immediate family members and other designated persons, and to revise the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises.

- 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.

No. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. In FY 23-24, \$1,512 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (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

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 24	FY 25	FY 26
Personal Services			
Operating Expenses	\$1,512	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,512	\$0	\$0

POSITIONS (#)

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.

In FY 23-24, \$1,512 will be spent for the state's administrative expenses for promulgation of this proposed rule and the final rule.

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

SOURCE	FY 24	FY 25	FY 26
State General Fund	\$1,512	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$1,512	\$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?

Yes, sufficient funds are available to implement this rule.

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 has no known impact on local governmental units.

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

There is no known impact on the sources of local governmental unit funding.

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 24	FY 25	FY 26
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds			
Local Funds			
TOTAL	\$0	\$0	\$0

*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.

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.

This proposed rule amends the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency (PHE) by clergy, immediate family members and other designated persons, in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. Additionally, the proposed rule revises the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises, in compliance with House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule will be beneficial to hospice patients by allowing visits by clergy, family members and other persons during a declared PHE.

- 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.

It is anticipated that implementation of this proposed rule will not result in costs to hospice providers in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by establishing standards for visitation during a declared PHE and clarifying the geographic service area.

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.

This rule has no known effect on competition and employment.