

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 ~~which is~~ 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 purposed 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