

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Hospital Licensing Standards (LAC 48:I.Chapter 93 and 9443)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 and §9443 as authorized by R.S. 36:254, 40:2100-2115, and 29:760. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 540 of the 2022 Regular Session of the Louisiana Legislature established procedures for competent adult victims of sexually oriented criminal offenses to be provided with reproductions of written documentation resulting from their forensic medical exam in the possession of healthcare providers. Act 35 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to require licensed healthcare facilities that provide any surgical procedure using heat-producing equipment to adopt and implement policies for a surgical smoke plume evacuation plan to mitigate and remove the surgical smoke plume. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department 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 (PHE).

In compliance with Acts 540, 35, and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of hospitals in order to permit competent adult victims of sexually oriented criminal offenses to receive written documentation resulting from their forensic medical exam in the possession of the hospital, to require hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and to update the requirements for visitation by members of the clergy during a declared PHE.

Title 48
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part I. General Administration
Subpart 3. Licensing and Certification

Chapter 93. Hospitals

Subchapter A. General Provisions

§9303. Definitions

A. The following definitions of selected terminology are used in connection with Chapter 93.

Surgical Smoke Plume-the byproduct of using heat-producing equipment on tissue during surgery.

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 45:1475 (October 2019), LR 49:

Subchapter B. Visitation by Members of the Clergy during a Declared Public Health Emergency

§9336. Visitation by Members of the Clergy during a Declared Public Health Emergency

A. For purposes of this Section, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or current law.

B. - D. ...

E. Subject to compliance with the requirements of this Section, each hospital shall allow members of the clergy to visit patients of the hospital 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.- 2. ...

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

a. that the hospital shall give special consideration and priority for clergy visitation to patients receiving end-of-life care;

b. 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, as applicable;

c. that a clergy member may not be allowed to visit a hospital 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;

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

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the hospital, considering the patient's medical condition or clinical considerations. At the hospital's discretion, personal

protective equipment may be made available by the hospital to clergy members;

f. that a hospital's policy and procedure include provisions for compliance with a state health officer (SHO) order limiting visitation during a declared PHE;

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

h. that a hospital's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in hospitals during a declared PHE issued by any federal government agency that are more restrictive than this Section.

4. A hospital shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

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

6. A hospital shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 29:760.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:1580 (June 2022), amended LR 49:

Subchapter H. Medical Record Services

§9387. Organization and Staffing

A. - K. ...

L. Upon request of a competent adult victim of a sexually oriented criminal offense as defined in R.S. 15:622, or current law, the hospital that performed the forensic medical exam shall provide a reproduction of any written documentation which is in the possession of the hospital resulting from the forensic medical exam of the victim.

1. The documentation shall be provided to the victim no later than 14 days after the hospital receives the request or the hospital completes the documentation, whichever is later.

2. The reproduction of written documentation provided for in this Subsection shall be made available at no cost to the victim and may only be released at the direction of the victim who is a competent adult. This release does not invalidate the victim's reasonable expectation of privacy nor does the record become a public record after the release to the victim.

M. A hospital record may be kept in any written, photographic, microfilm, or other similar method or may be kept by any magnetic, electronic, optical or similar form of data compilation which is approved for such use by the department. No magnetic, electronic, optical or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

N. A hospital may at its discretion, cause any hospital record or part to be microfilmed, or similarly reproduced, in order to accomplish efficient storage and preservation of hospital records.

AUTHORITY NOTE: Promulgated in accordance with 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 29:2415 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter L. Surgical Services (Optional)

§9443. Surgery Suite and Equipment

A. - E. ...

F. There shall be policies and procedures for a surgical smoke plume evacuation plan to mitigate and remove surgical smoke plume during a surgical procedure that uses heat-producing

equipment, including but not limited to electrosurgery and lasers.

1. - 6. Repealed.

G. The emergency equipment in the surgical suite shall include:

1. a communication system that connects each operating room with a control center;
2. cardiac monitor;
3. resuscitator;
4. defibrillator;
5. aspirator (suction equipment); and
6. tracheotomy set.

AUTHORITY NOTE: Promulgated in accordance with 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 29:2420 (November 2003), amended 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 victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared public health emergency comply with legislative mandates.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973, since competent adult victims of sexually oriented criminal offenses will not be charged for obtaining written documentation resulting from their forensic medical exam.

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, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170, but may result in an indeterminable impact on the direct or indirect cost to the provider related to the reproduction of written documentation from the forensic medical exam of competent adult victims of sexually oriented criminal offenses since the documents must be provided at no cost to the patient.

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: Hospital 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 \$1,188 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 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 hospitals in order to permit competent adult victims of sexually oriented offenses to receive written documentation resulting from their forensic medical exam which is in possession of the hospital, in compliance with Act 540 of the 2022 Regular Session of the Louisiana Legislature. Additionally, the proposed rule complies with Act 35 of the 2023 Regular Session of the Louisiana Legislature by requiring hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and also updates the requirements for visitation by members of the clergy during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This proposed rule will be beneficial by allowing competent adult victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared PHE comply with legislative mandates. This proposed rule may result in indeterminable costs to hospitals related to reproduction of written documentation from the forensic medical exam for competent adult victims of sexually oriented criminal offenses for FY 23-24, FY 24-25, and FY 25-26, since the documents must be provided at no cost to the patient. There may also be an indeterminable impact as a result of policies the provider may adopt and implement to address evacuation of the surgical smoke plume.

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 hospitals in order to permit competent adult victims of sexually oriented offenses to receive written documentation resulting from their forensic medical exam which is in possession of the hospital, in compliance with Act 540 of the 2022 Regular Session of the Louisiana Legislature. Additionally, the proposed rule complies with Act 35 of the 2023 Regular Session of the Louisiana Legislature by requiring hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and also updates the requirements for visitation by members of the clergy during a declared public health emergency (PHE), in compliance with Act 367 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 540 of the 2022 Regular Session of the Louisiana Legislature established procedures for competent adult victims of sexually oriented criminal offenses to be provided with reproductions of written documentation resulting from their forensic medical exam in the possession of healthcare providers. Act 35 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to require licensed healthcare facilities that provide any surgical procedure using heat-producing equipment to adopt and implement policies for a surgical smoke plume evacuation plan to mitigate and remove the surgical smoke plume. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department 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 (PHE).

In compliance with Acts 540, 35, and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of hospitals in order to permit competent adult victims of sexually oriented criminal offenses to receive written documentation resulting from their forensic medical exam in the possession of the hospital, to require hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and to update the requirements for visitation by members of the clergy during a declared PHE.

- 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, \$1,188 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	\$1,188	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,188	\$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, \$1,188 will be spent for the state's administrative expense 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	\$1,188	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$1,188	\$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.

This 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 hospitals in order to permit competent adult victims of sexually oriented offenses to receive written documentation resulting from their forensic medical exam which is in possession of the hospital, in compliance with Act 540 of the 2022 Regular Session of the Louisiana Legislature. Additionally, the proposed rule complies with Act 35 of the 2023 Regular Session of the Louisiana Legislature by requiring hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and also updates the requirements for visitation by members of the clergy during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This proposed rule will be beneficial by allowing competent adult victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared PHE comply with legislative mandates..

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.

This proposed rule may result in indeterminable costs to hospitals related to reproduction of written documentation from the forensic medical exam for competent adult victims of sexually oriented criminal offenses for FY 23-24, FY 24-25, and FY 25-26, since the documents must be provided at no cost to the patient. There may also be an indeterminable impact as a result of policies the provider may adopt and implement to address evacuation of the surgical smoke plume.

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.