

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Nursing Facilities Licensing Standards (LAC 48:I.Chapter 97)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 97 as authorized by R.S. 36:254 and R.S. 40:2009.2-2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 3 of the 2023 Regular Session of the Louisiana Legislature allows the Department of Health the option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan. 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 the minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Acts 3 and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan and to amend the

provisions governing visitation by clergy, immediate family members and other designated persons during a declared PHE.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter B. Organization and General Services

§9767. Emergency Preparedness

A. - A.5. ...

B. Emergency Preparedness Plan Approval Process

1. - 4.b. ...

5. Revision and Resubmission of Emergency Preparedness

Plan

a. - b. ...

c. The department shall review the nursing home's updated and revised emergency preparedness plan to confirm that all required changes, amendments, or revisions have been incorporated into the plan, and it shall approve the emergency preparedness plan and issue an approval letter to the nursing home. If the required changes, amendments, or revisions have not been incorporated, the department shall reject the emergency preparedness plan and issue a letter of rejection to the nursing home. The department may revoke or deny renewal of a license to a

nursing home that has received a letter of rejection of its emergency preparedness plan.

6. - 8.f. ...

9. Annual Review of Emergency Preparedness Plan

a. - f.iv. ...

(a). The department may revoke or deny renewal of a license to a nursing home that has received a letter of rejection of its emergency preparedness plan.

B.9.v. - K.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2-2009.44.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1905 (November 2016), amended LR 48:1290 (May 2022), LR 49:1076 (June 2023), LR 49:

§9769. Visitation by Members of the Clergy During a Declared Public Health Emergency

A. For purposes of §9769 and §9771, 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. - H. ...

I. Subject to the requirements of §9769.E-G, each nursing facility shall allow members of the clergy to visit residents of the nursing facility during a declared public health emergency (PHE) when a resident, 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 nursing facility's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that the nursing facility shall give special consideration and priority for clergy visitation to residents 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; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the nursing facility shall utilize those methods and protocols;

c. that a clergy member may not be allowed to visit a nursing facility resident 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 nursing facility resident if the clergy member refuses to comply with the provisions of the nursing facility's policy and

procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions; and

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to clergy members.

f. ...

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

h. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency.

4. A nursing facility 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 nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility 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. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1309 (September 2021), amended LR 49:

§9771. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency

A. - D. ...

E. Subject to the requirements of §9771.A-C, each nursing facility shall allow immediate family members and other designated persons to visit a resident of the nursing facility during a declared public health emergency (PHE) when a resident, 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. - 2. ...

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

a. that the nursing facility shall give special consideration and priority for visitation by immediate family members and other designated persons to residents receiving end-of-life care;

b. that visitation by immediate family members of the residents and other designated persons may be screened for infectious agents or infectious diseases and will pass such screening prior to each visitation, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the nursing facility shall utilize those methods and protocols;

c. that an immediate family member or other designated person may not be allowed to visit a nursing facility resident 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;

d. that an immediate family member or other designated person may not be allowed to visit a nursing facility resident if the immediate family member or other designated person

refuses to comply with the provisions of the nursing facility's policy and procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions;

e. that immediate family members and other designated persons may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to immediate family members and other designated persons;

f. ...

g. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency;

h. that includes provisions for off-site visitation, allowing an immediate family member or other designated person to visit a nursing facility resident away from the facility campus; and

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

4. A nursing facility 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 nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility 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. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1310 (September 2021), amended 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 ensuring that the requirements for visitation by clergy, immediate family members, and other persons designated by nursing facility residents 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 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, but may impact the provider's ability to provide the same level of service as described in HCR 170 if the nursing facility receives a letter of

rejection of its emergency preparedness plan and LDH chooses to revoke or deny renewal of its license.

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: Nursing Facilities

Baton Rouge, LA Licensing Standards

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 \$1,296 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 nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness , in compliance with Act 3 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule also amends the provisions governing visitations by clergy, immediate family and other designated persons during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This will be beneficial to nursing facility residents and providers by ensuring that the requirements for visitation by clergy, immediate family and other designated persons during a declared PHE comply with legislative mandates. It is anticipated that implementation of this proposed rule will not result in costs to nursing facilities in FY 23-24, FY 24-25, and FY 25-26, but may adversely impact facilities that receive letters of rejection of their emergency preparedness plans if the department elects to revoke or deny renewal of the facility's license.

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 nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness , in compliance with Act 3 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule also amends the provisions governing visitations by clergy, immediate family and other designated persons 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 3 of the 2023 Regular Session of the Louisiana Legislature allows the Department of Health the option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan. 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 the minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Acts 3 and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan and to amend the provisions governing visitation by clergy, immediate family members and other designated persons 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, \$1,296 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	\$1,296	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,296	\$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, \$1,296 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	\$1,296	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$1,296	\$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 nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness , in compliance with Act 3 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule also amends the provisions governing visitations by clergy, immediate family and other designated persons during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This will be beneficial to nursing facility residents and providers by ensuring that the requirements for visitation by clergy, immediate family and other designated persons during a declared PHE comply with legislative mandates.

- 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 nursing facilities in FY 23-24, FY 24-25, and FY 25-26, but may adversely impact facilities that receive letters of rejection of their emergency preparedness plans if the department elects to revoke or deny renewal of the facility's license.

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.