

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Home and Community-Based Services Providers Licensing Standards (LAC 48:I.Chapter 50)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 50 as authorized by R.S. 36:254 and R.S. 40:2120.1 et seq. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of home and community-based services providers in order to clarify the requirements regarding worker's compensation, general and professional liability insurance, hours of operation, and business location closure.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 50. Home and Community-Based Services Provider Licensing Standards

Subchapter A. General Provisions

§5001. Introduction

A. - C. ...

D. The following entities shall be exempt from the licensure requirements for HCBS providers:

1. - 1.e. ...

2. any person, agency, institution, society, corporation, or group that provides gratuitous HCBS;

3. - 5. ...

a. Repealed.

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1. et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:63 (January 2012), amended LR 38:1410 (June 2012), LR 40:1007 (May 2014), LR 41:2638 (December 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:2498 (December 2017), LR 48:

§5007. Initial Licensure Application Process

A. ...

B. The initial licensing application packet shall include:

1. ...

2. a copy of the approval letter of the architectural facility plans for the adult day care (ADC) module and the center-based respite (CBR) module from the Office of the

State Fire Marshal (OSFM), and any other office/entity designated by the department to review and approve the facility's architectural plans;

3. a copy of the on-site inspection report for the ADC module and the CBR module with approval for occupancy by the OSFM;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health (OPH) for the ADC module and the CBR module;

5. - 5.a. ...

6. proof of financial viability, comprised of the following:

a. - a. ii. ...

b. general and professional liability insurance in the amount of at least \$300,000 that is current and in effect at the time of license application and ongoing through the term of licensure; and

c. worker's compensation insurance that is current and in effect at the time of license application and ongoing through the term of licensure;

NOTE: The LDH HSS shall specifically be identified as the certificate holder on these policies pursuant to §5007.B.6.a-c and any certificates of insurance issued as proof of insurance by the insurer or producer (agent). The policy shall have a

cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

7. ...

8. the usual and customary business hours, which shall be no less than eight hours per business day or unless otherwise approved;

B.9. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1. et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:66 (January 2012), amended LR 41:2638 (December 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:2500 (December 2017), LR 48:

§5014. Change of Ownership of an HCBS Provider

A. - C.2. ...

D. The applicant shall submit the following licensing requirements to the department:

1. - 2. ...

3. proof of financial viability to include:

a. ...

b. general and professional liability insurance of at least \$300,000 that is current and in effect at the time

of application for licensure and ongoing through the term of licensure; and

c. worker's compensation insurance that is current and in effect at the time of application for licensure and ongoing through the term of licensure.

NOTE: The LDH HSS shall specifically be identified as the certificate holder on these policies pursuant to §5014.D.3.a-c and any certificates of insurance issued as proof of insurance by the insurer or producer (agent). The policy shall have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

4. If center-based services such as ADC or CBR are also being acquired in the change of ownership, the prospective new owner shall be required to submit approvals for occupancy from OPH and the OSFM. Such approvals shall be issued under the name of the center as given by the new owner.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1. et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:2502 (December 2017), amended LR 48:

§5015. Renewal of License

A. The HCBS provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet shall include:

1. ...

2. the usual and customary business hours, which shall be no less than eight hours per business day or unless otherwise approved; and

3. a current OSFM report for the ADC module and the CBR module;

4. a current Office of Public Health inspection report for the ADC module and the CBR module;

5. - 6. ...

7. proof of financial viability, comprised of the following:

a. ...

b. general and professional liability insurance of at least \$300,000 that is current and in effect at the time of application for license renewal and ongoing throughout the term of the renewed licensure period; and

c. worker's compensation insurance that is current and in effect at the time of application for license renewal and ongoing throughout the term of the renewed licensure period.

NOTE: The LDH HSS shall specifically be identified as the certificate holder on these policies pursuant to §5015.A.7.a-c and any certificates of insurance issued as proof of insurance by the insurer or producer (agent). The policy shall have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1. et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:68 (January 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:2502 (December 2017), LR 48:

Subchapter B. Administration and Organization

§5031. Business Location

A. ...

B. The business location shall have:

1. a separate entrance and exit from any other entity, business or trade; and

2. signage that is easily viewable indicating the provider's legal or trade name, address and days and hours of business operation as stated in the provider's license application;

a. any planned deviation of the provider's days and hours of operation shall be reported to the HSS within five business days;

i. for closures of the business location for short term periods, such as holidays, the provider shall:

(a). notify the clients and responsible parties whenever necessary; and

(b). have a communication plan in place for emergencies; and

b. any unplanned deviation of provider's days and hours of operation shall be reported to the HSS within two business days.

C. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1. et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:74 (January 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:2508 (December 2017), LR 48:

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:978.1 et seq.

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 March 2, 2022.

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 February 9, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on, February 24, 2022 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 February 9, 2022. 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. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located

between North Sixth and North Fifth/North and Main Streets
(cater-corner from the Bienville Building). Validated parking
for the Galvez Garage may be available to public hearing
attendees when the parking ticket is presented to LDH staff at
the hearing.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person Preparing Statement:	<u>Veronica Dent</u>	Dept.:	<u>Health</u>
Phone:	<u>342-3238</u>	Office:	<u>Bureau of Health Services Financing</u>
Return Address:	<u>P.O. Box 91030</u>	Rule Title	<u>Home and Community-Based Services Providers</u>
	<u>Baton Rouge, L</u>		<u>Licensing Standards</u>
		Date Rule Takes Effect:	<u>April 20, 2022</u>

SUMMARY
(Use complete sentences)

In accordance with Section 953 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 21-22. It is anticipated that \$1,188 will be expended in FY 21-22 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 since the licensing fees, in the same amounts, will continue to be collected.

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 home and community-based services (HCBS) providers in order to clarify the requirements regarding worker's compensation, general and professional liability insurance, hours of operation, and business location closure. It is anticipated that implementation of this proposed rule will not result in costs to HCBS providers in FY 21-22, FY 22-23 and FY 23-24, but will be beneficial by ensuring that the licensing requirements are clearly and accurately promulgated in the *Louisiana Administrative Code*.

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

1/5/2022
Date of Signature

Alvin M. Boyer

Legislative Fiscal Officer or Designee

1/5/22
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 home and community-based services (HCBS) providers in order to clarify the requirements regarding worker's compensation, general and professional liability insurance, hours of operation, and business location closure.

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

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of home and community-based services providers in order to clarify the requirements regarding worker's compensation, general and professional liability insurance, hours of operation, and business location closure.

- 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 21-22. In FY 21-22, \$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 22	FY 23	FY 24
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 21-22, \$1,188 will be spent for the state's administrative expense for promulgation of this proposed and final rule.

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

SOURCE	FY 22	FY 23	FY 24
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 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 22	FY 23	FY 24
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds			
Local Funds			
TOTAL			

*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 home and community-based services (HCBS) providers in order to clarify the requirements regarding worker's compensation, general and professional liability insurance, hours of operation, and business location closure.

- 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 the implementation of this proposed rule will not result in costs to HCBS providers in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by ensuring that the licensing requirements are clearly and accurately promulgated in the *Louisiana Administrative Code*.

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.