

**NOTICE OF INTENT**

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

**Facility Need Review  
Exception Criteria for Bed Approvals  
(LAC 48:I.12533)**

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.12533 as authorized by R.S. 36:254 and 40:2116. 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 promulgated an Emergency Rule which amended the provisions governing facility need review approvals of licensed and Medicaid certified facility beds in order to prevent the expiration of approvals for nursing facilities, intermediate care facilities for persons with developmental disabilities, and adult residential care providers with inactivated licenses as a result of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or 29:766 (*Louisiana Register*, Volume 49, Number 6). This proposed Rule is being promulgated to continue the provisions of the June 9, 2023 Emergency Rule.

**Title 48  
PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 5. Health Planning**

**Chapter 125. Facility Need Review**

**Subchapter F. Exception Criteria for Bed Approvals**

**§12533. Declared Disasters and Emergency Events**

A. The facility need review bed approvals for a licensed and Medicaid certified nursing facility, ICF/DD, or for a licensed adult residential care provider (ARCP) located in an area or areas which have been affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 shall remain in effect and shall not be terminated, revoked or considered to have expired for a period not to exceed two years for a nursing facility or ARCP, and one year for an ICF/DD, following the original date of such executive order or proclamation, provided that the following conditions are met:

1. the nursing facility, ICF/DD, or ARCP shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the nursing facility, ICF/DD, or ARCP has experienced an interruption in the ~~provisions~~provision of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. - c. ...

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2. A nursing facility, ICF/DD, or ARCP resumes operating as a nursing facility, ICF/DD, or ARCP in the same service area, within two years for a nursing facility or ARCP and within one year for an ICF/DD, of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766; and

3. ...

B. ~~The provisions~~ For good cause shown, the department may, in its sole discretion, grant two extensions of six months each, for a total of twelve additional months, to a facility described in Subsection A of this Section ~~shall not apply,~~ during which time the facility need review approvals shall remain in effect and not be terminated, revoked, or considered to have expired, provided that the following conditions are met:

1. ~~a~~ A nursing facility, ICF/DD, or ARCP ~~which has voluntarily surrendered its facility need review bed approval;~~ or submits a written extension request to the department 30 days prior to the expiration of the original time period established in Subsection A or the expiration of the first extension granted under these provisions.

a. The written extension request shall include evidence of progress in re-opening, including construction and expenditures on the repairs to or replacement of the facility.

b. The written extension request shall include an estimated re-opening date for the facility.

2. ~~a nursing~~The facility, ~~ICF/DD, or ARCP which fails to resume operations~~ resumes operating as a nursing facility, ICF/DD, ARCP in the same service area, within ~~two years for a nursing facility or ARCP and within one year for an ICF/DD,~~ the time period of the ~~executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766~~extension(s).

3. The facility continues to submit the required documentation and information to the department.

C. ~~Failure to comply with any of the~~The provisions of this Section shall ~~be deemed a voluntary surrender of the facility need review bed approvals.~~ not apply to:

1. a nursing facility, ICF/DD, or ARCP which has voluntarily surrendered its facility need review bed approval;  
or

2. a nursing facility, ICF/DD, or ARCP which fails to resume operations as a nursing facility, ICF/DD, or ARCP in the same service area, within two years for a nursing facility or ARCP and within one year for an ICF/DD, or within the

deadlines of any extensions granted thereto, of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766.

D. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the facility need review bed approvals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2621 (December 2008), amended LR 35:2439 (November 2009), LR 39:1469 (June 2013), 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 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 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 August 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 August 9, 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 August 24, 2023 in Room 173 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 August 9, 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