

NOTICE OF INTENT

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

**Hospice Licensing Standards
(LAC 48:I.8201 and 8217)**

The Department of Health, Bureau of Health Services Standards proposes to amend LAC 48:I.8201 and §8217 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.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing hospice licensing to include the definition of a public health emergency (PHE) and add exemptions relating to the qualifications required for certain nursing staff hired during a PHE.

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:

Public Health Emergency (PHE)-a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq.

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:

Subchapter B. Organization and Staffing

§8217. Personnel Qualifications/Responsibilities

A. - G.7. ...

H. Licensed Practical Nurse (LPN). The LPN shall work under the direct supervision of a registered nurse (RN) and perform skilled nursing services as delegated by the RN. The

role of the LPN in hospice is limited to stable hospice patients.

1. Qualifications. An LPN shall be currently licensed by the Louisiana State Board of Practical Nurse Examiners with no restrictions:

a. with at least two years of full time experience as an LPN;

EXCEPTION: The requirement in 1.a is waived for any LPN that becomes employed by a hospice provider during a declared public health emergency (PHE) which extends statewide and continues for more than 90 consecutive days. Any LPN hired under this exception may continue to be employed by the same hospice provider after the PHE is over.

b. - c. ...

2. Responsibilities. The LPN shall perform skilled nursing services under the supervision of an RN, in a manner consistent with standards of practice, including but not limited to, such duties as follows:

a. observe, record, and report to the RN or director of nurses on the general physical and mental conditions of the patient;

b. ...

c. assist the physician and/or RN in performing specialized procedures;

d. - i. ...

3. Restrictions. An LPN shall not:

a. - f. ...

g. function as a supervisor of the nursing practice of any RN; or

H.3.h. - N.2.c. ...

O. Registered Nurse (RN). The hospice shall designate an RN to coordinate the implementation of the POC for each patient.

1. Qualifications. A licensed RN shall be currently licensed to practice in the state of Louisiana with no restrictions:

a. have at least two years of full-time experience as an RN. However, two years of full-time clinical experience in hospice care as an LPN may be substituted for the required two years of experience as an RN; and

EXCEPTION: The requirement in 1.a is waived for any RN that becomes employed by a hospice provider during a declared PHE which extends statewide and continues for more than 90 consecutive days. Any RN hired under this exception may continue to be employed by the same hospice provider after the PHE is over.

b. be an employee of the hospice. If the RN is employed by more than one agency, he/she must inform all employers and coordinate duties to assure quality service provision.

O.2. - R.1.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2181-2191.

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 24:2262 (December 1998), LR 25:2409 (December 1999), LR 29:2801 (December 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 44:594 (March 2018), LR 47:

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 as it will ensure that sufficient hospice staff are available to provide services during public health emergencies.

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 because it will ensure that sufficient hospice staff are available to provide services during public health emergencies.

Small Business Statement

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 a positive impact on small businesses, as described in R.S. 49:965.2 et seq. because it reduces the barriers to hiring during a public health emergency.

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 a positive impact on the staffing level and qualifications required to provide the same level of service during a public health emergency, no direct or indirect cost to the provider to provide the same

level of service, but will have a positive impact on the provider's ability to provide the same level of service as described in HCR 170 because it reduces the barriers to hiring during a public health emergency.

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 July 30, 2021.

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 July 12, 2021. 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 July 29, 2021 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 July 12, 2021. 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: Veronica Dent Dept.: Health

Phone: 342-3238 Office: Bureau of Health Services Financing

Return
Address: P.O. Box 91030 Rule
Baton Rouge, LA Title: Hospice Licensing Standards

Date Rule
Takes Effect: September 20, 2021

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 20-21. It is anticipated that \$864 will be expended in FY 20-21 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 have no effect on 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 hospice licensing to include the definition of a public health emergency (PHE) and add exemptions relating to the qualifications required for certain nursing staff hired during a PHE. This Rule will be beneficial to recipients as it will ensure continued access to hospice services during a PHE. Providers and small businesses will benefit from implementation of this proposed Rule since the change in qualifications will alleviate potential nursing staff shortages during PHEs. It is anticipated that implementation of this proposed Rule will not result in costs to hospice providers in FY 20-21, FY 21-22, or FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition but may improve employment by removing barriers to hiring during public health emergencies.


Signature of Agency Head or Designee

Tasheka Dukes, RN
Deputy Assistant Secretary
LDH Health Standards Section
Typed Name & Title of Agency Head or Designee

06-04-21
Date of Signature


Legislative Fiscal Officer or Designee

6/9/21
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 hospice licensing to include the definition of a public health emergency (PHE) and add exemptions relating to the qualifications required for certain nursing staff hired during a PHE.

- 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 hospice licensing to include the definition of a public health emergency (PHE) and add exemptions relating to the qualifications required for certain nursing staff hired during a 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 20-21. In FY 20-21, \$864 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 21	FY 22	FY 23
Personal Services			
Operating Expenses	\$864	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$864	\$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 20-21, \$864 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 21	FY 22	FY 23
State General Fund	\$864	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$864	\$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 21	FY 22	FY 23
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 hospice licensing to include the definition of a public health emergency (PHE) and add exemptions relating to the qualifications required for certain nursing staff hired during a PHE. This Rule will be beneficial to recipients as it will ensure continued access to hospice services during a PHE. Providers and small businesses will benefit from implementation of this proposed Rule since the change in qualifications will alleviate potential nursing staff shortages during PHEs.

- 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 hospice providers in FY 20-21, FY 21-22, or FY 22-23.

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 but may improve employment by removing barriers to hiring during public health emergencies.