

NOTICE OF INTENT

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

**Intermediate Care Facilities
for Persons with Developmental Disabilities
Licensing Standards
(LAC 48:I.8519 and 8591)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.8519 and §8591 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 27 of the 2020 Second Extraordinary Session of the Louisiana Legislature directed the Department of Health to promulgate rules that provide minimum standards in relation to the requirements for licensed intermediate care facilities for persons with developmental disabilities (ICF/DDs) to allow visitation of immediate family members or other designated persons during a public health emergency (PHE) declared in accordance with R.S. 29:766 or to address Coronavirus Disease 2019 (COVID-19). In compliance with Act 27, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of ICF/DDs in order to establish minimum requirements and limitations for visitations of immediate family members or other designated persons during a declared PHE or to address COVID-19.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification

**Chapter 85. Intermediate Care Facilities for Persons with
Developmental Disabilities**

Subchapter A. General Provisions

§8519. Statement of Deficiencies

A. - C.7. ...

8. Pursuant to R.S. 40:2180.2(11), determination of dispute resolutions regarding deficiencies related to visitation during a declared public health emergency or related to Coronavirus Disease 2019 (COVID-19), subject to federal requirements, shall be issued by the department to the facility within 35 calendar days after the receipt of the request from the intermediate care facilities for persons with developmental disabilities (ICF/DD) for an informal dispute resolution of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3186 (December 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 47:

Subchapter F. Provider Responsibilities

**§8591. Visitation by Close Family Members of a Resident
During a Declared Public Health Emergency**

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

B. ICF/DDs shall comply with any federal law, regulation, requirement, order, or guideline regarding visitation in ICF/DDs issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8591.C-G shall be preempted by any federal statute, federal regulation or guidance from a federal government agency that requires an ICF/DD to restrict resident visitation in a manner that is more restrictive than the rules.

C. ICF/DDs shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in ICF/DDs during a declared PHE.

D. ICF/DDs shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in ICF/DDs during a declared PHE.

E. The provisions of this Section regarding visitation by a close family member of a resident of an ICF/DD to visit the resident during any state of PHE shall apply to all ICF/DDs licensed by LDH.

F. For purposes of this Section, a close family member shall mean a parent, step-parent, sibling, step-sibling, aunt,

uncle, child, step-child, spouse, mother-in-law, father-in-law, grandparent, grandchild, or legal representative of the ICF/DD resident.

G. Subject to compliance with the requirements of §8591.B-D, each ICF/DD shall allow close family members of the residents to visit a resident of the ICF/DD during a declared PHE when a resident, or his legal or designated representative, requests a visit with close family members of the resident, subject to the following conditions and requirements:

1. Each ICF/DD shall have a written policy and procedure addressing visitation by close family members of the resident. A copy of the written policy and procedure shall be available, without cost, to the resident and his legal or designated representative, upon request. The ICF/DD shall provide a link to an electronic copy of the policy and procedure to close family members of the residents, upon request.

2. An ICF/DD's policy and procedure regarding visitation by close family members may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the ICF/DD, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical considerations of an individual resident.

3. An ICF/DD's policy and procedure on visitation by close family members shall, at a minimum, require the following:

a. that the ICF/DD give special consideration and priority for visitation by close family members and other designated persons to residents receiving end-of-life care;

b. that visitation by close family members and other designated persons will 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 ICF/DD shall utilize those methods and protocols;

c. that a close family member or other designated person not be allowed to visit an ICF/DD resident if such close family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such close family member or other designated person tests positive for an infectious agent or infectious disease;

d. that a close family member or other designated person not be allowed to visit an ICF/DD resident if the close family member and other designated person refuses to comply with the provisions of the ICF/DD's policy and procedure

or refuses to comply with the ICF/DD 's reasonable time, place, and manner restrictions;

e. that close family members and other designated persons be required to wear personal protective equipment as determined appropriate by the ICF/DD, considering the resident's medical condition or clinical considerations;

i. at the ICF/DD's discretion, personal protective equipment may be made available by the ICF/DD to close family members and other designated persons;

f. that an ICF/DD's policy and procedure include provisions for compliance with a Louisiana state health officer (SHO) order or emergency notice or governor's executive order or proclamation limiting visitation during a declared PHE;

g. that an ICF/DD's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines issued by any federal government agency regarding visitation in ICF/DDs during a declared PHE; and

h. that includes provisions for off-site visitation, allowing a close family member to visit an ICF/DD resident away from the facility campus; the policy and procedure shall include requirements for allowing the resident to return to the facility upon certain conditions, such as meeting testing and isolation requirements recommended by the CDC, the Centers for Medicare and Medicaid Services (CMS), a Louisiana SHO order

or emergency notice, or a governor's executive order or proclamation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, 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 positively affect family functioning, stability and autonomy as described in R.S. 49:972 by allowing immediate family members or other designated persons to visit residents of intermediate care facilities for persons with developmental disabilities during declared 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 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. 49:965.2 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 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, the department will conduct a public hearing at 8:00 a.m. on July 29, 2021 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. 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
Title: Intermediate Care Facilities for Persons
Baton Rouge, LA with Developmental Disabilities
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 \$972 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)

In compliance with Act 27 of the 2020 Second Extraordinary Session, this proposed rule amends the provisions governing the licensing of intermediate care facilities for persons with developmental disabilities (ICF/DDs) in order to establish minimum requirements and limitations for visitations of immediate family members or other designated persons during a declared public health emergency (PHE) or to address COVID-19. This proposed Rule will be beneficial to ICF/DD residents by allowing visits by immediate family members during a PHE. It is anticipated that implementation of this proposed rule will not result in costs to ICF/DDs for FY 20-21, FY 21-22, and FY 22-23, and will be beneficial by establishing standards for visitation during a declared PHE.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.


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).

In compliance with Act 27 of the 2020 Second Extraordinary Session, this proposed rule amends the provisions governing the licensing of intermediate care facilities for persons with developmental disabilities (ICF/DDs) in order to establish minimum requirements and limitations for visitations of immediate family members or other designated persons during a declared public health emergency (PHE) or to address COVID-19.

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

Act 27 of the 2020 Second Extraordinary Session of the Louisiana Legislature directed the Department of Health to promulgate rules that provide minimum standards in relation to the requirements for licensed intermediate care facilities for persons with developmental disabilities (ICF/DDs) to allow visitation of immediate family members or other designated persons during a public health emergency (PHE) declared in accordance with R.S. 29:766 or to address Coronavirus Disease 2019 (COVID-19). In compliance with Act 27, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of ICF/DDs in order to establish minimum requirements and limitations for visitations of immediate family members or other designated persons during a declared PHE or to address COVID-19.

- 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, \$972 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	\$972	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$972	\$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, \$972 will be spent for the state's administrative expense for promulgation of this proposed rule and final rule.

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

SOURCE	FY 21	FY 22	FY 22
State General Fund	\$972	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$972	\$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 21	FY 22	FY 23
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.

In compliance with Act 27 of the 2020 Second Extraordinary Session, this proposed rule amends the provisions governing the licensing of intermediate care facilities for persons with developmental disabilities (ICF/DDs) in order to establish minimum requirements and limitations for visitations of immediate family members or other designated persons during a declared public health emergency (PHE) or to address COVID-19. This proposed Rule will be beneficial to ICF/DD residents by allowing visits by immediate family members during a PHE.

- 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 ICF/DDs for FY 20-21, FY 21-22, and FY 22-23, and will be beneficial by establishing standards for visitation during a declared PHE.

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.