

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Facility Need Review Relocation of Nursing Facility Beds (LAC 48:I.12529)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.12529 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 proposes to amend the provisions governing the facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions.

Title 48

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

Chapter 125. Facility Need Review

Subchapter D. Relocation of Nursing Facility Beds

§12529. General Provisions

A. A nursing facility's approved beds (Medicaid facility need review approvals) cannot be relocated to a different service area, subject to the exception in Section 12529.C below.

B. - B.6.g. ...

C. In addition to Subsection B, approved beds may be relocated in the same service district or same parish under the following conditions.

1. The department may approve a one-time partial relocation/transfer of a nursing facility's Medicaid facility need review (FNR) approvals to another licensed, certified, operational nursing facility in the same parish, provided that all of the following provisions are met:

a. The transferring nursing facility shall send a written request to the department's licensing section at least 30 days before the proposed transfer, for the department's review and approval.

b. The transferring nursing facility may relocate/transfer Medicaid FNR approvals to another nursing facility pursuant to Section 12529.C only once.

c. The transferring nursing facility and the receiving nursing facility shall be related companies which are under "common ownership."

i. For purposes of this Subsection, "common ownership" is defined as the same persons or entities owning at least 80 percent of both companies.

ii. For purposes of this Subsection, ownership includes, but is not limited to, shares in a corporation, membership in a limited liability company, or partnership interest in a partnership or limited liability partnership.

d. The transferring nursing facility may not relocate/transfer less than 10 Medicaid FNR approvals to another nursing facility.

e. A transferring nursing facility may not relocate/transfer more than 25 percent of its Medicaid FNR approvals to another facility.

f. The Medicaid FNR approvals relocated/transferred become Medicaid FNR approvals of the receiving nursing facility, and the transferring nursing facility relinquishes all rights in those Medicaid FNR approvals, but may retain licensure of the licensed nursing facility beds.

g. At the time of the relocation/transfer of the Medicaid FNR approvals, the receiving facility shall have more licensed nursing facility beds than it has Medicaid FNR approvals. The number of Medicaid FNR approvals transferred

shall not exceed the number of licensed-only beds (licensed nursing facility beds not having Medicaid FNR approval) at the receiving nursing facility; the receiving nursing facility is prohibited from receiving more Medicaid FNR approvals than can be utilized for the receiving nursing facility's current licensed bed capacity. Under no circumstances shall a receiving facility license additional beds in order to accommodate the relocated Medicaid FNR approvals. After the relocation, the receiving nursing facility shall have the same number of licensed beds as prior to the relocation.

h. All relocated Medicaid FNR approvals are subject to state and federal bed change guidelines and procedures.

i. The provisions of Section 12529.C pertaining to the transfer of Medicaid FNR approvals shall sunset in 24 months from the date of the promulgation of the final Rule implementing Section 12529.C and shall have no effect henceforth.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004),

LR 32:845 (May 2006), LR 34:2619 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1009 (May 2010), amended by the Department of Health, Bureau of Health Services Financing LR 46:

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. 49:965.2 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 Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2020.

The department will conduct a public hearing at 9:30 a.m. on April 29, 2020 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. 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.

Stephen R. Russo, JD

Interim 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:

PO Box 91030

Rule

Title: Facility Need Review

Baton Rouge, LA

Relocation of Nursing Facility Beds

Date Rule

Takes Effect: June 20, 2020

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 19-20, as the rule will not result in an increase in licensed nursing home beds and will not result in an increase in Medicaid Facility Need Review Approvals. It is anticipated that \$756 will be expended in FY 19-20 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 facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions. Implementation of this proposed Rule will be beneficial to nursing facility providers by ensuring that the requirements for the partial relocation of approved beds are clearly and accurately reflected in the Louisiana Administrative Code. It is anticipated that the implementation of this proposed rule will have no costs to nursing facility providers and no impact on small businesses in FY 19-20, FY 20-21 and FY 21-22, as the rule will not result in an increase in licensed nursing home beds and will not result in an increase in Medicaid Facility Need Review Approvals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head or Designee

Cecile Castello, BSN, RN

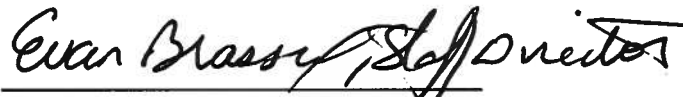
Deputy Assistant Secretary,

LDH Health Standards Section

Typed Name & Title of Agency Head or Designee

3-10-2020

Date of Signature



Legislative Fiscal Officer or Designee

3/10/20

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 facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions.

- 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 facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions.

- 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 19-20. In FY 19-20, \$756 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 20	FY 21	FY 22
Personal Services			
Operating Expenses	\$756		
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$756		

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 19-20, \$756 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 20	FY 21	FY 22
State General Fund	\$756		
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
TOTAL	\$756		

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 20	FY 21	FY 22
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 facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions. Implementation of this proposed Rule will be beneficial to nursing facility providers by ensuring that the requirements for the partial relocation of approved beds are clearly and accurately reflected in the Louisiana Administrative Code.

- 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 have no costs to nursing facility providers and no impact on small businesses in FY 19-20, FY 20-21 and FY 21-22, as the rule will not result in an increase in licensed nursing home beds and will not result in an increase in Medicaid Facility Need Review Approvals.

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.