

NOTICE OF INTENT

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

**Nursing Facilities
Licensing Standards
Virtual Visitation
(LAC 48:I.9781)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 48:I.9781 as authorized by R.S. 36:254 and 40:1193.1-1193.11. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 596 of the 2018 Regular Session of the Louisiana Legislature, hereafter referred to as the Nursing Home Virtual Visitation Act, enacted R.S. 40:1193.1-1193.11 which directed the Department of Health to establish provisions governing nursing facility virtual visitation in order to provide for consent, by a nursing facility resident or a legal representative, relative to the authorization for installation and use of a monitoring device in the room of the resident.

In compliance with the requirements of Act 596, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the licensing of nursing facilities in order to adopt provisions governing virtual visitation (*Louisiana Register*, Volume 44, Number 11). This proposed Rule is being promulgated

to continue the provisions of the November 20, 2018 Emergency Rule.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter C. Resident Rights

§9781. Virtual Visitation

A. Each nursing facility licensed by the Department of Health shall comply with the provisions of the Nursing Home Virtual Visitation Act of 2018 enacted by the Louisiana Legislature, or such amendments enacted thereafter.

B. The term "monitoring device", as used in this Section, shall have the same meaning as defined in the Nursing Home Virtual Visitation Act of 2018.

C. Capacity to Consent to Virtual Visitation

1. A resident's capacity to consent to the authorization for installation and use of a monitoring device is presumed if the resident has not been interdicted and has no current documented medical diagnosis affecting capacity.

2. Any question as to capacity of a non-interdicted resident to consent to the authorization for installation and use of a monitoring device shall be determined by the resident's admitting physician, the resident's personal physician, or the

medical director of the nursing facility; such determination shall be documented in the resident's medical record.

3. The nursing facility shall have a policy regarding capacity to consent to the authorization for installation and use of a monitoring device in a resident's room; such policy shall include, at a minimum, the provisions of §9781.C.1 and §9781.C.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:1193.1-1193.11.

HISTORICAL NOTE: Promulgated by the Department of Health Bureau of Health Services Financing, LR 45:

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 or autonomy as described in R.S. 49:972.

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 may have a negative impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 since nursing facility residents that consent to virtual visitation or their families are responsible for the costs associated with the installation and

use of monitoring devices in the residents' rooms.

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 and no direct or indirect cost to the provider to provide the same level of service. These provisions will have no impact the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 27, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary