

## RULE

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, is adopting the following rule in the Title XIX (Medicaid) Program. The emergency rulemaking provisions of the Administrative Procedure Act, R.S. 49:953B, were exercised effective January 2, 1990 and published in the *Louisiana Register* Vol. 16, Number 1, page 13 on January 20, 1990 relative to this provision. The rule was published as a notice of intent on February 20, 1990 (Volume 16, No. 2, page 162).

#### TEMPORARY MANAGEMENT

##### I. Notice of Appointment of Temporary Manager

A. When the Secretary of the Department of Health and Hospitals determines that a nursing facility is in need of a temporary manager, he shall provide written notice which shall include:

1. the date the appointment shall take effect;
2. a statement setting forth grounds for the appointment;
3. the name of the person within the Department of Health and Hospitals who has the responsibility for responding to inquiries about the appointment;
4. the name of the person appointed temporary manager, if such designation has been made;
5. a statement explaining the procedure for requesting a hearing.

B. Notice shall be delivered by hand or by certified mail to the owner and administrator of a nursing facility and shall be effective upon receipt.

##### II. Grounds; Effective Date of Appointment

A. Appointment of a temporary manager based on one or more of the following grounds will be effective immediately upon receipt of notice, unless a later effective date is specified in the notice:

1. the facility is operating without a current Louisiana license;
2. the licensee has abandoned the facility;
3. the nursing facility is closing within 30 calendar days and the Department of Health and Hospitals has reasonable cause to believe that inadequate arrangements designed to minimize the adverse effects of transfer have been made to relocate its residents;
4. a condition or practice in a facility poses a serious and imminent threat to the health, safety, or welfare of the residents or presents a substantial probability that death or serious physical harm would result therefrom. The facility owner may request approval from the secretary to be put on 23-day fast track in lieu of temporary management. However, such request may only be granted when the secretary determines that an adequate plan to protect the health, safety, and welfare of residents has been devised by the facility to prevent an imminent threat of harm to the facility's residents and when the secretary has provided satisfactory means for the department to monitor subsequent implementation of such corrective measures by the facility.

B. Appointment of a temporary manager based on one or more of the following grounds shall become effective only upon the later of the expiration of the period for seeking appeal or upon the entry of a final administrative determination by the Department of Health and Hospitals or a hearing officer:

1. The nursing facility exhibits a consistent pattern of violating residents' rights established pursuant to Louisiana or federal laws or regulations.
2. The nursing facility is experiencing financial difficulties that present a substantial probability the facility will be compelled to terminate operation.

##### III. Powers and Duties of Temporary Manager

A. The licensee and administrator shall be divested of administration of the nursing facility in favor of the temporary manager from the effective date of appointment.

B. The temporary manager shall have the following powers and duties:

1. Exercise those powers and perform those duties set out by the Department of Health and Hospitals in accordance with these and any other applicable provisions.

2. Operate the nursing facility in such manner as to assure safety and adequate health care for the residents.

3. Take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the temporary manager is appointed, or the proceeds from any transfer thereof, and use them only in the performance of authorized powers and duties.

4. Use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the nursing facility.

5. Collect payments for all goods and services provided to residents or others during the period of the temporary management at the same rate of payment charged by the owners at the time the temporary manager was appointed or at a fair and reasonable rate as otherwise approved by the Department of Health and Hospitals.

6. Correct or eliminate any deficiency in the structure or furnishings of the nursing facility which endangers the safety, health, or welfare of residents, provided the total cost of correction does not exceed \$5,000. The Department of Health and Hospitals may order expenditures for this purpose in excess of \$5,000 on application from the temporary manager after notice to the owner and an opportunity for informal hearing by the secretary or his designee to determine the reasonableness of the expenditures.

7. Let contracts and hire employees at rates reasonable in the community to carry out the powers and duties of the temporary management.

8. Honor all leases, mortgages, and secured transactions governing the building in which the nursing facility is located and all goods and fixtures in the building of which the temporary manager has taken possession, but only to the extent of payment which, in the case of a rental agreement, are for the use of the property during the period of temporary management, or which, in the case of a purchase agreement, become due during that same period.

9. Have full power to direct, manage, and discipline employees of the nursing facility, subject to any contract rights they have. The temporary manager shall not discharge employees without authorization from the Department of Health and Hospitals and notice to the owner. Temporary management shall not relieve the owner of any obligation to employees made prior to the appointment of a temporary manager and not carried out by the temporary manager.

10. Preserve all property or assets of residents which are in the possession of a nursing facility or its owner; preserve all property or assets and all resident records of which the temporary manager takes possession; and provide for the prompt transfer of the property, assets, and records to the new placement of any transferred resident. An inventory list certified by the owner and temporary manager shall be made at the time the temporary manager takes possession of the nursing facility.

##### IV. Procedure for Payments to Temporary Manager

As soon as possible after the effective date of appointment of the temporary manager but in no event later than 10 days thereafter, the owner or administrator shall inform the temporary manager of the name and addresses of all persons owing money to the facility and of the amounts owed. The temporary manager shall be the proper recipient of all funds due and owing to the facility from and after the effective date of appointment.

tive date of appointment, regardless of whether such funds are for goods or services rendered before or after the effective date of appointment. The temporary manager shall notify persons making payments to the home of the appointment of a temporary manager.

A person who is notified of the Department of Health and Hospitals' appointment of a temporary manager and of the temporary manager's name and address shall be liable to pay the temporary manager for any goods or services provided by the temporary manager after the date of the appointment, if the person would have been liable for the goods and services as supplied by the owner. The temporary manager shall give a receipt for each payment and shall keep a copy of each receipt on file. The temporary manager shall deposit amounts received in a separate account and may make disbursements from such account. The temporary manager may bring an action to enforce liabilities created by the foregoing provisions. A payment to the temporary manager of any sum owing to the nursing facility or to its owner shall discharge any obligation to the nursing facility to the extent of the payment.

#### V. Qualifications and Compensation of a Temporary Manager

The Department of Health and Hospitals shall appoint to serve as a temporary manager any person qualified by education and the requisite experience in nursing home administration and who is licensed in accordance with Louisiana law. A temporary manager shall have no financial or fiduciary interest in the facility or any affiliated entities. No temporary manager shall be appointed who is affiliated with a management firm under an order of decertification in Louisiana or another state. The Department of Health and Hospitals shall set the necessary expense of the temporary management. Said compensation shall be in line with the prevailing wage in the nursing home field and shall be charged as an expense to the facility for which the manager is appointed. The department may seek reimbursement for such expenses by deducting the appropriate amount from funds due or payable to the facility.

#### VI. Personal Liability of Temporary Manager

A temporary manager may be held liable in a personal capacity for the temporary manager's gross negligence, intentional acts, or breach of fiduciary duty, but otherwise, the acts and omissions of such temporary manager will be defended and discharged by the department. The Department of Health and Hospitals shall secure a bond to cover any acts of negligence or mismanagement committed by the temporary manager when not covered by the facility's insurance.

#### VIII. Termination of Temporary Management

The Department of Health and Hospitals may terminate a temporary manager when it determines that the temporary management is no longer necessary because the conditions which gave rise to the temporary management no longer exist, all of the Title XVIII and XIX residents in the nursing facility have been transferred or discharged and the facility is no longer certified as a provider in the Title XVIII or XIX programs, or the temporary manager has concluded all financial and patient care responsibilities. However, the department shall not terminate a temporary management without first determining that the party assuming responsibility for continued operation of the facility is capable of competently managing the facility in compliance with all requirements of federal and state law.

#### VIII. Notice of Appeal

Within seven days from its receipt of certified mail notice, the nursing facility may appeal the decision to appoint a temporary manager by delivering notice to the person within the Department of Health and Hospitals who has responsibility for responding to inquiries about the appointment and to the Department of Social Services, Appeals Bureau, 755 Riverside Mall, Baton Rouge, LA 70802.

#### IX. Administrative Hearing

If an appeal is requested on a timely basis, a hearing officer

from the Department of Social Services, Appeals Bureau shall conduct an administrative hearing in accordance with provisions of the Administrative Procedure Act. Such hearing shall be held within 10 days of the receipt of the request. The hearing officer shall review all relevant evidence and make a final determination in such matters no later than seven days after the conclusion of the administrative hearing.

#### X. Administrative Hearing Conclusions

At the conclusion of an administrative hearing, the hearing officer shall make specific findings of fact and conclusions of law regarding each alleged condition concerning the appointment. The hearing officer's findings shall be delivered by hand or shall be posted via certified mail to the owner and administrator of the nursing facility or to its counsel no later than seven days after the hearing and shall constitute a final administrative determination of the matter. Either the department or the nursing facility may seek judicial review of the determination in accordance with the provisions of the Administrative Procedure Act.

David L. Ramsey  
Secretary