




State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD 
Secretary

Re: Second Report to LAC 48:I.Chapter 45 – Ambulatory Surgical Centers – Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Ambulatory Surgical Centers – Licensing Standards, LAC 48:I.Chapter 45.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1482). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Cynthia York, Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, HSS Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Ambulatory Surgical Center
Licensing Standards
(LAC 48:I.Chapter 45)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 45 as authorized by R.S. 36:254 and R.S. 40:2131-2141. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 35 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to require licensed healthcare facilities that provide any surgical procedure using heat-producing equipment to adopt and implement policies for a surgical smoke plume evacuation plan to mitigate and remove the surgical smoke plume. In compliance with Act 35, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to require ASCs to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 45. Ambulatory Surgical Center

Subchapter A. General Provisions

§4503. Definitions

* * *

Surgical Smoke Plume-the byproduct of using heat-producing equipment on tissue during surgery.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1732 (September 2017), amended LR 49:

§4507. Initial Licensure Application Process

A. ...

B. The initial licensing application packet shall include:

1. - 4. ...

5. proof of each insurance coverage as follows:

a. - b. ...

c. professional liability insurance of at least \$100,000 per occurrence/\$300,000 per annual aggregate, or proof of self-insurance of at least \$100,000, along with proof of enrollment as a qualified health care provider with the Louisiana Patient's Compensation Fund (PCF):

i. if the ASC is not enrolled in the PCF, professional liability limits shall be \$1 million per occurrence/\$3 million per annual aggregate; and

B.5.d. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1734 (September 2017), amended LR 49:

§4515. Renewal of License

A. The ASC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet shall include:

1. - 5. ...

6. proof of each insurance coverage as follows:

a. - b. ...

c. professional liability insurance of at least \$100,000 per occurrence/\$300,000 per annual aggregate, or proof of self-insurance of at least \$100,000, along with proof of enrollment as a qualified health care provider with the Louisiana Patient's Compensation Fund (PCF):

A.6.c.i. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1736 (September 2017), amended LR 49:

Subchapter F. Safety, Sanitization and Emergency Preparedness

§4575. General Provisions

A. The ASC shall have policies and procedures, approved and implemented by the medical staff and governing body, that address provisions for:

1. sanitizing, disinfecting and sterilizing supplies, equipment and utensils;

2. the safe use of cleaning supplies and solutions that are to be used and the directions for use, including:

a. ...

b. cleaning of the OR/procedure rooms between surgical and nonsurgical procedures; and

3. surgical smoke plume evacuation to mitigate and remove surgical smoke plume during a surgical procedure that uses heat-producing equipment, including but not limited to electrosurgery and lasers.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1752 (September 2017), amended LR 49:

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 the Small Business Protection Act, 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.

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 September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Ambulatory Surgical Center Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 23-24. It is anticipated that \$756 will be expended in FY 23-24 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 revenue collections as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to require ASCs to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, in compliance with Act 35 of the 2023 Regular Session of the Louisiana Legislature. It is anticipated that implementation of this proposed rule may result in an indeterminable impact to ambulatory surgical centers for FY 23-24, FY 24-25, and FY 25-26, as a result of policies the providers may adopt and implement to address evacuation of the surgical smoke plume.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN
Deputy Assistant Secretary
2308#044

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office




State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From:  Stephen R. Russo, JD
Secretary

Re: Second Report to LAC 48:I.5303 – Crisis Receiving Centers – Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Crisis Receiving Centers – Licensing Standards, LAC 48:I.5303.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1484). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Cynthia York, Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, HSS Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

Physician's Emergency Certificate (PEC)—an emergency certificate executed by a physician, physician assistant, psychiatric mental health nurse practitioner, or other nurse practitioner, or psychologist pursuant to R.S. 28:53, or current law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180.11 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:102 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 47:472 (April 2021), LR 48:301 (February 2022), LR 49:

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 the Small Business Protection Act, 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.

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 September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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

NOTICE OF INTENT

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

Crisis Receiving Centers
Licensing Standards
(LAC 48:I.5303)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.5303 as authorized by R.S. 36:254 and R.S. 40:2180.11 et seq. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 363 of the 2023 Regular Session of the Louisiana Legislature allows coroners and deputy coroners who are physicians to execute emergency certificates via actual examination or telemedicine examinations. In compliance with Act 363, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of crisis receiving centers in order to update the definitions to appropriately reflect the providers who may execute a coroner's or physician's emergency certificate.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 53. Level III Crisis Receiving Centers

Subchapter A. General Provisions

§5303. Definitions

Coroner's Emergency Certificate (CEC)—a certificate issued by the coroner or his/her deputy pursuant to R.S. 28:53, or current law.

PEC—Repealed.

hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Crisis Receiving Centers
Licensing Standards**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 23-24. It is anticipated that \$432 will be expended in FY 23-24 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 as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of crisis receiving centers in order to update the definitions to appropriately reflect the providers who may execute a coroner's or physician's emergency certificate, in compliance with Act 363 of the 2023 Regular Session of the Louisiana Legislature. Act 363 allows coroners and deputy coroners who are physicians to execute these certificates via actual examination or telemedicine examinations. Implementation of this proposed rule is not anticipated to result in costs to providers in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the providers who may execute a coroner's or physician's emergency certificate are accurately reflected in the *Louisiana Administrative Code*.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN
Deputy Assistant Secretary
2308#045

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee
The Honorable Chairman Mack "Bodi" White, Senate Finance Committee
The Honorable Chairman Jerome Zeringue, House Appropriations Committee

From: Stephen R. Russo, JD
Secretary

Re: Second Report to LAC 50:V.2901 and 2903 – Disproportionate Share Hospital Payments
– Reimbursement Methodology

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Disproportionate Share Hospital Payments – Reimbursement Methodology, LAC 50:V.2901 and 2903.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1485). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Tizi Robinson, Tizi.Robinson@la.gov, Jackie Cummings, Jackie.Cummings2@la.gov, and Debbie Gough, Debbie.Gough@la.gov, if you have any questions or require additional information about this matter.

Cc: Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Rachel Newman, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

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 disproportionate share hospital (DSH) payments to increase the reimbursement for DSH eligible services provided by hospitals through a cooperative endeavor agreement with the Office of Behavioral Health (OBH) in order to align the payment rate for OBH-approved DSH days to the Medicaid inpatient psychiatric per diem rate on file for free-standing psychiatric hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 29. Public-Private Partnerships

§2901. Qualifying Criteria

A. Free-Standing Psychiatric Hospitals. Effective for dates of service on or after January 1, 2013, a free-standing psychiatric hospital may qualify for this category by being:

1. a Medicaid enrolled non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. - b. ...

2. a Medicaid enrolled non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. - b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:2259 (November 2014). amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§2903. Reimbursement Methodology

A. - A.2. ...

B. Effective for dates of service on or after December 1, 2023, payment for DSH eligible services provided through a cooperative endeavor agreement with the Department of Health shall be equal to the Medicaid per diem rate on file for free-standing psychiatric hospitals.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made. Reasonableness will be determined at the sole discretion of the department. Payments shall be made on a monthly basis.

2. Payment for DSH eligible services at the Medicaid rate shall be contingent on qualifying hospitals maintaining and timely submitting all department required documentation for DSH eligible services throughout the review and audit process.

3. Payments shall be limited to \$552.05 per day if the department determines that the qualifying hospital is not maintaining or timely submitting the required documentation for DSH eligible services throughout the review and audit process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

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

NOTICE OF INTENT

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

**Disproportionate Share Hospital Payments
Reimbursement Methodology
(LAC 50:V.2901 and 2903)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.2901 and §2903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the

40:2259 (November 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:323 (February 2017), LR 49:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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 the Small Business Protection Act, 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.

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 and will have no impact on the total direct and indirect cost to the provider to provide the same level of service, but may enhance the provider's ability to provide the same level of service as described in HCR 170, since this proposed Rule increases payments for the services they already render.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Disproportionate Share Hospital Payments—Reimbursement Methodology

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$716,191 for FY 23-24, \$1,214,293 for FY 24-25, and \$1,214,293 for FY 25-26. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 23-24 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 implementation of this proposed rule will increase federal revenue collections by approximately \$1,498,705 for FY 23-24, \$2,581,560 for FY 24-25, and \$2,581,560 for FY 25-26. It is anticipated that \$324 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing disproportionate share hospital (DSH) payments to increase the reimbursement for DHS eligible services provided by hospitals through a cooperative endeavor agreement with the Office of Behavioral Health in order to align the payment rate for OBH-approved DSH days to the Medicaid inpatient psychiatric per diem rate on file for free-standing psychiatric hospitals. Implementation of this proposed rule is anticipated to increase Medicaid payments to qualifying hospitals by \$2,214,248 for FY 23-24, \$3,795,853 for FY 24-25, and \$3,795,853 for FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2308#046

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From:  Stephen R. Russo, JD
Secretary

Re: Second Report to LAC 48.I.8201, 8259, and 8561 – Hospice Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Hospice Licensing Standards, LAC 48.I.8201, 8259, and 8561.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1486). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Cynthia York, Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, HSS Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT
Department of Health
Bureau of Health Services Financing

Hospice Licensing Standards
(LAC 48:I.8201, 8259, and 8561)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.8201 and adopt §8259 and §8261 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.

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency. House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature requires the department to amend the administrative Rule governing the geographic location of hospice providers to authorize such providers to serve patients in any parish within a 50 mile radius of their geographic location. In compliance with Act 367 and HR 152, the Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency by clergy, immediate family members and other designated persons, and to revise the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises.

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:

* * *

Geographic Area—area around location of licensed agency that includes any parish within 50 mile radius of the hospice premises. Each hospice shall designate the geographic area in which the agency will provide services.

* * *

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 47:1307 (September 2021), LR 49:

Subchapter E. Hospice Inpatient Facility

§8259. Visitation by Members of the Clergy during a Declared Public Health Emergency

A. For purposes of §8259 and §8261, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers, R.S. 29:790 et seq., or current law.

B. For purposes of this Section, clergy shall be defined as follows:

1. a minister, priest, preacher, rabbi, imam, Christian Science practitioner; or
2. other similar functionary of a religious organization; or
3. an individual reasonably believed to be such a clergy member by the person consulting him.

C. For purposes of §8259 and §8261, patient shall mean a patient of a licensed inpatient hospice in Louisiana, or the legal or designated representative of the patient.

D. A licensed inpatient hospice shall comply with any federal law, regulation, requirement, order or guideline regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8259.E-H shall be preempted by any federal statute, regulation, requirement, order, or guideline from a federal government agency that requires an inpatient hospice to restrict patient visitation in a manner that is more restrictive than the rules.

E. An inpatient hospice shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in an inpatient hospice during a declared PHE.

F. An inpatient hospice shall comply with an executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in an inpatient hospice during a declared PHE.

G. The provisions of this Section regarding visitation by members of the clergy shall apply to all inpatient hospice facilities licensed by the Department of Health (LDH).

H. Subject to the requirements of §8259.D-F, each inpatient hospice shall allow a member of the clergy to visit patients of an inpatient hospice during a declared PHE when a patient, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. Each inpatient hospice shall have a written policy and procedure addressing visitation by members of the clergy. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The inpatient hospice shall provide a link to an electronic copy of the policy and procedure to a member of the clergy, upon request.

2. An inpatient hospice's policy and procedure regarding clergy visitation may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the inpatient hospice, 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 consideration of an individual patient.

3. An inpatient hospice's policy and procedure on clergy visitation, at a minimum, requires the following:

- a. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention (CDC), as applicable;

- i. if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the inpatient hospice shall utilize those methods and protocols;

- b. that a clergy member may not be allowed to visit an inpatient hospice patient if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

- c. that a clergy member may not be allowed to visit an inpatient hospice if the clergy member refuses to comply

with the provisions of the inpatient hospice's policy and procedure or refuses to comply with the inpatient hospice's reasonable time, place, and manner restrictions;

d. that a clergy member may be required to wear personal protective equipment (PPE) as determined appropriate by the inpatient hospice, considering the patient's medical condition or clinical considerations;

i. the inpatient hospice's discretion PPE may be made available by the inpatient hospice to clergy members;

e. that an inpatient hospice's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

f. that the patient shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with a member of the clergy; and

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

4. An inpatient hospice shall submit a written copy of its visitation policies and procedures on clergy member visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the inpatient hospice shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An inpatient hospice shall within 24 hours after establishing its written policies and procedures on clergy member visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

§8561. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency

A. For the purposes of this Section, immediate family member shall mean the following in order of priority:

1. spouse;
2. natural or adoptive parent, child, or sibling;
3. stepparent, stepchild, stepbrother, or stepsister;
4. father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, or sister-in-law;
5. grandparent or grandchild;
6. spouse of a grandparent or grandchild; or
7. legal or designated representative of the patient.

B. A licensed inpatient hospice shall comply with any federal law, regulation requirement, order, or guideline regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8561.C-F shall be preempted by any federal statute, regulation, requirement, order or guideline from a federal government agency that requires an inpatient hospice to restrict patient visitation in a manner that is more restrictive than the rules.

C. Inpatient hospices shall comply with any Louisiana SHO order or emergency notice regarding visitation in inpatient hospices during a declared PHE.

D. Inpatient hospices shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in an inpatient hospice during a declared PHE.

E. The provisions of this Section regarding visitation by immediate family members of the patient and other designated persons, shall apply to all inpatient hospices licensed by LDH.

F. Subject to the requirements of §8561.B-D, each inpatient hospice shall allow immediate family members and other designated persons to visit a patient of the inpatient hospice during a declared PHE when a patient, or his legal or designated representative, requests a visit with immediate family members and other designated persons, subject to the following conditions and requirements:

1. Each inpatient hospice shall have a written policy and procedure addressing visitation by immediate family members and other designated persons. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The inpatient hospice shall provide a link to an electronic copy of the policy and procedure to immediate family members and other designated persons, upon request.

2. An inpatient hospice's policy and procedure regarding visitation by immediate family members and other designated persons may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the inpatient hospice, 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 patient.

3. An inpatient hospice's policy and procedure on visitation by immediate family members and other designated persons, at a minimum, requires the following:

a. that immediate family members of the patient and other designated persons, may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the CDC, as applicable;

i. if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the inpatient hospice shall utilize those methods and protocols;

b. that an immediate family member or other designated person may not be allowed to visit an inpatient hospice inpatient if such immediate family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such immediate family member or other designated person tests positive for an infectious agent or infectious disease;

c. that an immediate family member or other designated person may not be allowed to visit an inpatient hospice patient if the immediate family member or other designated person refuses to comply with the provisions of the inpatient hospice's policy and procedure, or refuses to comply with the inpatient hospice's reasonable time, place, and manner restrictions;

d. that the patient and immediate family members and other designated persons may be required to wear PPE as determined appropriate by the inpatient hospice,

considering the patient's medical condition or clinical consideration;

i. at the inpatient hospice's discretion, PPE may be made available by the inpatient hospice to immediate family members and other designated persons;

e. that an inpatient hospice's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

f. that the patient and an immediate family member or other designated person, shall have the right to consensual, nonsexual physical contact such as hand holding or hugging; and

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

4. An inpatient hospice shall submit a written copy of its policies and procedures on immediate family member or other designated person visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the inpatient hospice shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An inpatient hospice shall within 24 hours after establishing its written policies and procedures on immediate family member or other designated person visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

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 by allowing clergy, immediate family members, and other designated persons to visit hospice patients during a declared public health emergency.

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 the Small Business Protection Act, 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.

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 September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hospice Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 23-24. It is anticipated that \$1,512 will be expended in FY 23-24 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 as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency (PHE) by clergy, immediate family members and other designated persons, in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. Additionally, the proposed rule revises the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises, in compliance with House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule will be beneficial to

hospice patients by allowing visits by clergy, family members and other persons during a declared PHE. It is anticipated that implementation of this proposed rule will not result in costs to hospice providers in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by establishing standards for visitation during a declared PHE and clarifying the geographic service area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN
Deputy Assistant Secretary
2308#047

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD
Secretary

Re: Second Report to LAC 48.I.9303, 9336, 9387, and 9443 – Hospital Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Hospital Licensing Standards, LAC 48.I.9303, 9336, 9387, and 9443.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1490). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Cynthia York, Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, HSS Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 93. Hospitals
Subchapter A. General Provisions
§9303. Definitions

A. The following definitions of selected terminology are used in connection with Chapter 93.

* * *

Surgical Smoke Plume—the byproduct of using heat-producing equipment on tissue during surgery.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2400 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:513 (March 2010), LR 37:3028 (October 2011), LR 38:1413 (June 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1475 (October 2019), LR 49:

Subchapter B. Hospital Organizations and Services
§9336. Visitation by Members of the Clergy during a Declared Public Health Emergency

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

B. - D. ...

E. Subject to compliance with the requirements of this Section, each hospital shall allow members of the clergy to visit patients of the hospital during a declared PHE when a patient, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. - 2. ...

3. a hospital's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that the hospital shall give special consideration and priority for clergy visitation to patients receiving end-of-life care;

b. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable;

c. that a clergy member may not be allowed to visit a hospital patient if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

d. that a clergy member may not be allowed to visit a hospital patient if the clergy member refuses to comply with the provisions of the hospital's policy and procedure or

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Hospital Licensing Standards
(LAC 48:1.9303, 9336, 9387, and 9443)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 and §9443 as authorized by R.S. 36:254, 40:2100-2115, and 29:760. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 540 of the 2022 Regular Session of the Louisiana Legislature established procedures for competent adult victims of sexually oriented criminal offenses to be provided with reproductions of written documentation resulting from their forensic medical exam in the possession of healthcare providers. Act 35 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to require licensed healthcare facilities that provide any surgical procedure using heat-producing equipment to adopt and implement policies for a surgical smoke plume evacuation plan to mitigate and remove the surgical smoke plume. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department to amend the licensing standards for certain inpatient healthcare facilities in order to establish minimum requirements for visitation, including during a declared public health emergency (PHE).

In compliance with Acts 540, 35, and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of hospitals in order to permit competent adult victims of sexually oriented criminal offenses to receive written documentation resulting from their forensic medical exam in the possession of the hospital, to require hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and to update the requirements for visitation by members of the clergy during a declared PHE.

refuses to comply with the hospital's reasonable time, place, and manner restrictions;

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the hospital, considering the patient's medical condition or clinical considerations. At the hospital's discretion, personal protective equipment may be made available by the hospital to clergy members;

f. that a hospital's policy and procedure include provisions for compliance with a state health officer (SHO) order limiting visitation during a declared PHE;

g. that a patient shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with members of the clergy; and

h. that a hospital's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in hospitals during a declared PHE issued by any federal government agency that are more restrictive than this Section.

4. A hospital shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the hospital shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A hospital shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 29:760.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:1580 (June 2022), amended LR 49:

Subchapter H. Medical Record Services

§9387. Organization and Staffing

A. - K. ...

L. Upon request of a competent adult victim of a sexually oriented criminal offense as defined in R.S. 15:622, or current law, the hospital that performed the forensic medical exam shall provide a reproduction of any written documentation which is in the possession of the hospital resulting from the forensic medical exam of the victim.

1. The documentation shall be provided to the victim no later than 14 days after the hospital receives the request or the hospital completes the documentation, whichever is later.

2. The reproduction of written documentation provided for in this Subsection shall be made available at no cost to the victim and may only be released at the direction of the victim who is a competent adult. This release does not invalidate the victim's reasonable expectation of privacy nor does the record become a public record after the release to the victim.

M. A hospital record may be kept in any written, photographic, microfilm, or other similar method or may be kept by any magnetic, electronic, optical or similar form of data compilation which is approved for such use by the department. No magnetic, electronic, optical or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

N. A hospital may at its discretion, cause any hospital record or part to be microfilmed, or similarly reproduced, in order to accomplish efficient storage and preservation of hospital records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2415 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter L. Surgical Services (Optional) **§9443. Surgery Suite and Equipment**

A. - E. ...

F. There shall be policies and procedures for a surgical smoke plume evacuation plan to mitigate and remove surgical smoke plume during a surgical procedure that uses heat-producing equipment, including but not limited to electrosurgery and lasers.

1. - 6. Repealed.

G. The emergency equipment in the surgical suite shall include:

1. a communication system that connects each operating room with a control center;
2. cardiac monitor;
3. resuscitator;
4. defibrillator;
5. aspirator (suction equipment); and
6. tracheotomy set.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2420 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

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 by allowing victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared public health emergency comply with legislative mandates.

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, since competent adult victims of sexually oriented criminal offenses will not be charged for obtaining written documentation resulting from their forensic medical exam.

Small Business Analysis

In compliance with the Small Business Protection Act, 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.

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, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170, but may result in an indeterminable impact on the direct or indirect cost to the provider related to the reproduction of written documentation from the forensic medical exam of competent adult victims of sexually oriented criminal offenses since the documents must be provided at no cost to the patient.

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 September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hospital Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 23-24. It is anticipated that \$1,188 will be expended in FY 23-24 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 revenue collections as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of hospitals in order to permit competent adult victims of sexually oriented offenses to receive written

documentation resulting from their forensic medical exam which is in possession of the hospital, in compliance with Act 540 of the 2022 Regular Session of the Louisiana Legislature. Additionally, the proposed rule complies with Act 35 of the 2023 Regular Session of the Louisiana Legislature by requiring hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and also updates the requirements for visitation by members of the clergy during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This proposed rule will be beneficial by allowing competent adult victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared PHE comply with legislative mandates. This proposed rule may result in indeterminable costs to hospitals related to reproduction of written documentation from the forensic medical exam for competent adult victims of sexually oriented criminal offenses for FY 23-24, FY 24-25, and FY 25-26, since the documents must be provided at no cost to the patient. There may also be an indeterminable impact as a result of policies the provider may adopt and implement to address evacuation of the surgical smoke plume.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN
Deputy Assistant Secretary
2308#048

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office




State of Louisiana

Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD 
Secretary

Re: Second Report to LAC 50.IX.15161, 15163, and XV.27101 – Medicaid Reimbursement for Licensed Midwife or Certified Nurse Midwife Services

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Medicaid Reimbursement for Licensed Midwife or Certified Nurse Midwife Services, LAC 50.IX.15161, 15163, and XV.27101.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1494). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact WaRene Kimbell, WaRene.Kimbell@la.gov, if you have any questions or require additional information about this matter.

Cc: Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Kolynda Parker, Medicaid Deputy Director, LDH
Brandon Bueche, Medicaid Section Chief, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Medicaid Reimbursement for Licensed Midwife or Certified
Nurse Midwife Services
(LAC 50:IX.15161, 15163 and XV.27101)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15161 and §15163, and amend LAC 50:XV.27101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 207 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to implement a Medicaid reimbursement rate for midwifery services that is, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. In compliance with Act 207, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers

(Louisiana Register, Volume 49, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the August 1, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter G. Midwifery Services

§15161. General Provisions

A. Certified nurse midwives and licensed midwives shall be reimbursed as a percentage of physician reimbursement according to the established fee schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

§15163. Reimbursement Methodology

A. Effective for dates of service on or after August 1, 2023, services related to pregnancy and childbirth provided by certified nurse midwives (including licensed midwives), shall be reimbursed at 95 percent of the physician fee on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

Part XV. Services for Special Populations

Subpart 18. Free-Standing Birthing Centers

Chapter 271. Reimbursement

§27101. Reimbursement Methodology

A. - A.3. ...

B. Effective for dates of service on or after August 1, 2023, the reimbursement amounts for certified nurse midwives and licensed nurse midwives will be as follows:

1. certified nurse midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services rendered in the Professional Services Program; and

2. licensed midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services in the Professional Services Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:2360 (November 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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, since it will ensure that beneficiaries have continued access to care by licensed midwives and certified nurse midwives.

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 the Small Business Protection Act, 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, since it increases reimbursement to providers of midwifery services.

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, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170, since this proposed Rule increases payments to providers for the services they already render.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Medicaid Reimbursement for Licensed Midwife or Certified Nurse Midwife Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$44,085 for

FY 23-24, \$61,155 for FY 24-25, and \$62,989 for FY 25-26. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 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 implementation of this proposed rule will increase federal revenue collections by approximately \$167,096 for FY 23-24, \$228,125 for FY 24-25, and \$234,969 for FY 25-26. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the August 1, 2023 Emergency Rule, which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers, in compliance with Act 207 of the 2023 Regular Session of the Louisiana Legislature. The Act requires that the Medicaid reimbursement rate for midwifery services be, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. This proposed rule will ensure that Medicaid beneficiaries have continued access to these services. Implementation of this proposed rule is anticipated to increase reimbursement to licensed midwives and certified nurse midwives by \$210,641 for FY 23-24, \$289,280 for FY 24-25, and \$297,958 for FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2308#050

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

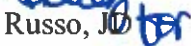


State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD 
Secretary

Re: Second Report to LAC 48.I.10001 and 10033 – Nurse Aide Training and Competency Evaluation Program

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Nurse Aide Training and Competency Evaluation Program, LAC 48.I.10001 and 10033.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1496). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Cynthia York, Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, HSS Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

a nurse aide training program. In compliance with Act 80, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the Nurse Aide Training and Competency Evaluation Program in order to update the qualifications for certified nurse aides to allow certification of individuals who have successfully completed a semester of a registered or practical nursing program, which includes a course on foundational nursing skills, to take an approved nurse aide competency evaluation examination and to update the registration requirements for the Louisiana Certified Nurse Aide Registry.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 100. Nurse Aide Training and Competency Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

* * *

Certified Nurse Aide—an individual who meets one of the following requirements and is listed as certified and in good standing on the Louisiana Certified Nurse Aide Registry (LCNAR):

1. has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of 42 Code of Federal Regulations (CFR) 483.151-483.154; or

2. has been determined competent as provided in 42 CFR 483.150(a) and (b); or

3. has successfully completed one semester of a registered or practical nursing program, which includes a course on foundational nursing skills, and has successfully passed an approved nurse aide competency evaluation examination.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2074 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1242 (May 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter C. Louisiana Certified Nurse Aide Registry §10033. General Provisions

A. The Department of Health (LDH) shall develop and maintain the Louisiana Certified Nurse Aide Registry (LCNAR) for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the LCNAR will have the following information maintained and retrievable:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

NOTICE OF INTENT

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

**Nurse Aide Training and Competency Evaluation Program
(LAC 48:I.10001 and 10033)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.10001 and §10033 as authorized by R.S. 36:254. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 80 of the 2023 Regular Session of the Louisiana Legislature revised the qualifications for certified nurse aides (CNAs) to permit individuals who successfully complete one semester of a registered or practical nursing program, which includes a course on foundational nursing skills, to apply to take an approved nurse aide competency evaluation examination and after successfully passing the examination the CNA is allowed to register with the Louisiana Certified Nurse Aide Registry without completing

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 the Small Business Protection Act, 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.

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 direct or indirect cost to the provider to provide the same level of service, but may have a positive impact on the staffing level requirements and qualifications and on the provider's ability to provide the same level of service as described in HCR 170, since the proposed Rule permits another option for nurse aides to become certified and to register with the Louisiana Certified Nurse Aide Registry.

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 September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nurse Aide Training and Competency Evaluation Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 23-24. It is anticipated that \$540 will be expended in FY 23-24 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 as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the Nurse Aide Training and Competency Evaluation Program in order to update the qualifications for certified nurse aides (CNAs) to allow certification of individuals who have successfully completed a semester of a registered or practical nursing program, which includes a course on foundational nursing skills, to take an approved nurse aide competency evaluation examination and after successfully passing the examination the CNA is allowed to register with the Louisiana Certified Nurse Aide Registry, in compliance with Act 80 of the 2023 Regular Session of the Louisiana Legislature. It is anticipated that this proposed rule will not result in costs to providers for FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by adding another method for certification which may expand the potential pool of CNAs available for employment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule is expected to have a positive effect on employment, as it provides another method for nurse aides to become certified and listed on the Louisiana Certified Nurse Aide Registry.

Tasheka Dukes, RN
Deputy Assistant Secretary
2308#051

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office




State of Louisiana
Louisiana Department of Health
Office of the Secretary

October 10, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD 
Secretary

Re: Second Report to LAC 48.I.9767, 9769, and 9771 – Nursing Facilities – Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Nursing Facilities – Licensing Standards, LAC 48.I.9767, 9769, and 9771.

A Notice of Intent on the proposed amendments was published in the August 20, 2023 issue of the *Louisiana Register* (LR 49:1497). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed Notice of Intent as published in the August 20, 2023 *Louisiana Register*.

Unless otherwise directed, the Department anticipates adopting the August 20, 2023 Notice of Intent when it is published as a final rule in the November 20, 2023 issue of the *Louisiana Register*.

Please contact Cynthia York, Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, HSS Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT
Department of Health
Bureau of Health Services Financing

Nursing Facilities
Licensing Standards
(LAC 48:I.9767, 9769, and 9771)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 97 as authorized by R.S. 36:254 and R.S. 40:2009.2-2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 3 of the 2023 Regular Session of the Louisiana Legislature allows the Department of Health the option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Acts 3 and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan and to amend the provisions governing visitation by clergy, immediate family members and other designated persons during a declared PHE.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter B. Organization and General Services

§9767. Emergency Preparedness

A. - A.5. ...

B. Emergency Preparedness Plan Approval Process

1. - 4.b....

5. Revision and Resubmission of Emergency Preparedness Plan

a. - b. ...

c. The department shall review the nursing home's updated and revised emergency preparedness plan to confirm that all required changes, amendments, or revisions have been incorporated into the plan, and it shall approve the emergency preparedness plan and issue an approval letter to the nursing home. If the required changes, amendments, or revisions have not been incorporated, the department shall reject the emergency preparedness plan and issue a letter of rejection to the nursing home. The department may revoke or deny renewal of a license to a nursing home that has received a letter of rejection of its emergency preparedness plan.

6. - 8.f. ...

9. Annual Review of Emergency Preparedness Plan

a. - f.iv. ...

(a). The department may revoke or deny renewal of a license to a nursing home that has received a letter of rejection of its emergency preparedness plan.

B.9.v. - K.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2-2009.44.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing. LR 42:1905 (November 2016), amended LR 48:1290 (May 2022). LR 49:1076 (June 2023). LR 49:

§9769. Visitation by Members of the Clergy during a Declared Public Health Emergency

A. For purposes of §9769 and §9771, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or current law

B. - H. ...

I. Subject to the requirements of §9769.E-G, each nursing facility shall allow members of the clergy to visit residents of the nursing facility during a declared public health emergency (PHE) when a resident, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. - 2. ...

3. A nursing facility's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that the nursing facility shall give special consideration and priority for clergy visitation to residents receiving end-of-life care;

b. that a clergy member may be screened for infectious agents or infectious diseases, 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 nursing facility shall utilize those methods and protocols;

c. that a clergy member may not be allowed to visit a nursing facility resident if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

d. that a clergy member may not be allowed to visit a nursing facility resident if the clergy member refuses to comply with the provisions of the nursing facility's policy and procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions; and

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to clergy members.

f. ...

g. that a resident shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with a member of the clergy; and

h. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency.

4. A nursing facility shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1309 (September 2021), amended LR 49:

§9771. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency

A. - D. ...

E. Subject to the requirements of §9771.A-C, each nursing facility shall allow immediate family members and other designated persons to visit a resident of the nursing facility during a declared public health emergency (PHE) when a resident, or his legal or designated representative, requests a visit with immediate family members and other designated persons, subject to the following conditions and requirements:

1. - 2. ...

3. A nursing facility's policy and procedure on visitation by immediate family members and other designated persons, at a minimum, requires the following:

a. that the nursing facility shall give special consideration and priority for visitation by immediate family members and other designated persons to residents receiving end-of-life care;

b. that visitation by immediate family members of the residents and other designated persons may 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 nursing facility shall utilize those methods and protocols;

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

d. that an immediate family member or other designated person may not be allowed to visit a nursing facility resident if the immediate family member or other designated person refuses to comply with the provisions of the nursing facility's policy and procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions;

e. that immediate family members and other designated persons may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to immediate family members and other designated persons;

f. ...

g. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency;

h. that includes provisions for off-site visitation, allowing an immediate family member or other designated person to visit a nursing facility resident away from the facility campus; and

i. that a resident and an immediate family member or other designated person shall have the right to consensual, nonsexual physical contact such as hand holding or hugging.

4. A nursing facility shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1310 (September 2021), amended LR 49:

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 by ensuring that the requirements for visitation by clergy, immediate family members, and other persons designated by nursing facility residents during a declared public health emergency comply with legislative mandates.

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 the Small Business Protection Act, 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.

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, but may impact the provider's ability to provide the same level of service as described in HCR 170 if the nursing facility receives a letter of rejection of its emergency preparedness plan and LDH chooses to revoke or deny renewal of its license.

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 September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nursing Facilities Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 23-24. It is anticipated that \$1,296 will be expended in FY 23-24 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 as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness, in compliance with Act 3 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule also amends the provisions governing visitations by clergy, immediate family and other designated persons during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This will be beneficial to nursing facility residents and providers by ensuring that the requirements for visitation by clergy, immediate family and other designated persons during a declared PHE comply with legislative mandates. It is anticipated that implementation of this proposed rule will not result in costs to nursing facilities in FY 23-24, FY 24-25, and FY 25-26, but may adversely impact facilities that receive letters of rejection of their emergency preparedness plans if the department elects to revoke or deny renewal of the facility's license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN
Deputy Assistant Secretary
2308#052

Patrice Thomas
Deputy Fiscal Officer
Legislative Office