

**NOTICE OF INTENT**  
**Department of Health**  
**Health Standards Section**

**Adult Day Health Care**  
**Licensing Standards**  
**(LAC 48:I.Chapter 42)**

The Department of Health, Health Standards Section proposes to amend LAC 48:I.Chapter 42 as authorized by R.S. 36:254 and R.S. 40: 40:2120.41-46. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Health Standards Section proposes to amend the provisions governing the licensing of adult day health care centers in order to add and revise definitions, update the process for granting waivers to building and construction guidelines and requirements, remove requirements for facility need review approval, and add provisions for an extension of the timeframe of inactivation of license due to a declared or non-declared disaster or emergency.

**Title 48**

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

**Chapter 42. Adult Day Health Care**

**Subchapter A. General Provisions**

**§4201. Introduction**

A. - B.6. ...

C. All registered nurses, licensed practical nurses, and/or certified nurse aides supplied by staffing agencies, shall be provided through licensed nurse staffing agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 34:2177 (October 2008), repromulgated LR 34:2622 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1964 (October 2017), amended by the Department of Health, Health Standards Section, LR 50:

**§4203. Definitions**

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*Licensed Practical Nurse (LPN)*—a person who practices practical nursing and who is licensed to practice practical nursing in accordance with R.S. 37:961 et seq., or current law. The LPN works under the supervision of a registered nurse.

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*Nurse Staffing Agency (NSA)*—any person, partnership, corporation, unincorporated association, or other legal entity, including a digital website/platform or digital smart phone application that employs, assigns, or refers nurses or certified nurse aides to render healthcare services in a healthcare facility for a fee. For purposes of these regulations, NSA does not include the following:

1. an NSA that solely provides services in Louisiana under a contract or other agreement with the state of Louisiana, or any executive branch department or agency thereof, as a result of a declared disaster, emergency, or public health emergency;

2. the federal or state government department or agency that provides nursing staff or certified nurse aides to any healthcare provider setting, evacuation site, or shelter location as a result of a declared disaster, emergency, or public health emergency; and

3. an entity that solely provides administrative or consulting services.

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*Registered Nurse (RN)*—any individual licensed in accordance with R.S. 37:911 et seq., or current law, to engage in the practice of nursing as defined in R.S. 37:913 et seq., or current law.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008), repromulgated LR 34:2622 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1964 (October 2017), amended by the Department of Health, Health Standards Section, LR 50:

#### **§4205. Licensure Requirements**

A. - B.2. ...

3. The ADHC center shall have admitted and have provided services to at least two participants in the past 12 months prior to their licensure resurvey onsite at the ADHC.

C. The licensed ADHC center is required to abide by and adhere to any state laws, rules, policy, and procedure manuals or memorandums pertaining to ADHC centers issued by LDH.

D. Plan Review. A complete online submittal of plans and specifications to the Office of the State Fire Marshal (OSFM) shall be made in accordance with the procedures established by that office. A letter shall accompany the plans to explain the scope of work. The letter shall include the types of services offered, ADHC center participant capacity, geographic location, special features, or specific requirements for the patient population served (e.g. age range, acuity level), and whether it is a relocation, renovation, and/or new construction. A copy of

this letter is to be sent to the ADHC Program Desk Manager, with the applicable ADHC application packet.

1. Submission of Plans

- a. New Construction. All new construction shall be done in accordance with the specific requirements of the OSFM and the Office of Public Health (OPH). The requirements cover new construction in ADHCs, including submission of preliminary plans and the final work drawings and specifications to each of these agencies. Plan review shall be performed in accordance with the rules and regulations established by the OSFM. Plans and specifications shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer and shall include scaled architectural plans stamped by an architect.

- b. Adult Day Health Care. No ADHC shall hereafter be licensed without the prior written approval of, and unless in accordance with plans and specifications approved in advance by the OSFM. This includes new construction, additions, renovations, or any change in service or the establishment of an ADHC in any healthcare facility or former healthcare facility.

2. Approval of Plans

- a. Notice of satisfactory review from the OSFM constitutes compliance with this requirement if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes, or rules of any responsible agency.

- b. In the event that submitted materials do not appear to satisfactorily comply with the Louisiana State Uniform Construction Code Council (LSUCCC), the OSFM shall notify the party submitting the plans in writing, listing the particular

items in question, and request further explanation and/or confirmation of necessary modifications.

### 3. Waivers

a. The secretary of the department may, within his/her sole discretion, grant waivers to building and construction guidelines or requirements and to provisions of the licensing rules involving the clinical operation of the ADHC. The facility shall submit a waiver request in writing to the licensing section of the department on forms prescribed by the department.

b. In the waiver request, the facility shall demonstrate the following:

i. how client health, safety, and welfare will not be compromised if such waiver is granted;

ii. how the quality of care offered will not be compromised if such waiver is granted; and

iii. the ability of the facility to completely fulfill all other requirements of the service or condition or regulation.

c. The licensing section of the department shall have each waiver request reviewed by an internal waiver review committee. In conducting such internal waiver review, the following shall apply:

i. the waiver review committee may consult subject matter experts as necessary, including the OSFM; and

ii. the waiver review committee may require the facility to submit risk assessments or other documentation to the department.

d. The director of the licensing section of the department shall submit the waiver review committee's recommendation on each waiver to the secretary, or the secretary's designee, for final determination.

e. The department shall issue a written decision of the waiver request to the facility. The granting of any waiver may be for a specific length of time.

f. The written decision of the waiver request is final. There is no right to an appeal of the decision of the waiver request.

g. If any waiver is granted, it is not transferrable in an ownership change or change of location.

h. Waivers are subject to review and revocation upon any change of circumstance related to the waiver or upon a finding that the health, safety, or welfare of a patient may be compromised.

i. Any waivers granted by the department prior to January 1, 2024, shall remain in place, subject to any time limitations on such waivers; further, such waivers shall be subject to the following:

i. such waivers are subject to review or revocation upon any change in circumstance related to the waiver or upon a finding that the health, safety, or welfare of a patient may be compromised; and

ii. such waivers are not transferrable in an ownership change or change of location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR 34:2623 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1965 (October 2017), amended by the Department of Health, Health Standards Section, LR 50:

**§4207. Initial License Application Process**

A. An initial application for licensing as an ADHC center shall be obtained from the department.

B. A completed initial license application packet for an ADHC center shall be submitted to and approved by the department prior to an applicant providing ADHC services. An applicant shall submit a completed initial licensing packet to the department, which shall include:

B.1. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:~~2120.41-46~~.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR 34:2624 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1965 (October 2017), amended by the Department of Health, Health Standards Section, LR 50:

**§4223. Inactivation of License due to a Declared Disaster or Emergency**

A. - A.1.c. ...

d. includes an attestation that all participants have been properly discharged or transferred to another center;

e. provides a list of each participant and where that participant is discharged or transferred to; and

f. pursuant to these provisions, an extension of the 60 day deadline for initiation of the request may be granted at the discretion of the department.

A.2. - F. ...

G. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the ADHC center license.

H. If the ADHC center requires an extension of the timeframe allowed by §4223 due to circumstances beyond the ADHC center's control, the department will consider an extension of the original inactivation period for up to 12 months to complete construction or repairs. Such written request for extension shall show the ADHC center's active efforts to complete construction or repairs and the reasons for the request for extension of the ADHC's inactive license. Any approval for extension is at the sole discretion of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1970 (October 2017), amended by the Department of Health, Health Standards Section, LR 50:

**§4224. Inactivation of License due to a Non-Declared Disaster or Emergency**

A. - D. ...

EXCEPTION: Repealed.

1. If the ADHC center requires an extension of the timeframe allowed by §4224 due to circumstances beyond the ADHC center's control, the department will consider an extension of the original inactivation period for up to 12 months to complete construction or repairs. Such written request for extension shall show the ADHC center's active efforts to complete construction or repairs and the reasons for the request for extension of ADHC center's inactive license. Any approval for extension is at the sole discretion of the department.

E. - I. ...



AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1970 (October 2017), amended by the Department of Health, Health Standards Section, 50:

#### **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 result in an indeterminable decrease in costs to small business healthcare providers since there is no way to determine how many small business healthcare providers will no longer be required to pay nonrefundable facility need review (FNR) application fees. The proposed Rule will have a beneficial impact on small business healthcare providers by ensuring that the requirements for granting waivers are accurately reflected in the *Louisiana Administrative Code*.

#### **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. It is anticipated that this proposed Rule will have an indeterminable decrease in costs to business healthcare providers since there is no way to determine how many business healthcare providers will no longer be required to pay nonrefundable facility need review (FNR) application fees. The proposed Rule will have a beneficial impact on business healthcare providers by ensuring that the requirements for granting waivers are accurately reflected in the *Louisiana Administrative Code*.

#### **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 January 2, 2024.

#### **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 December 11, 2023. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on January 4, 2024 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 December 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. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person Preparing Statement:	Cynthia York	Dept.:	Health
Phone:	342-9049	Office:	Health Standards Section
Return Address:	P. O. Box 3767	Rule Title:	Behavioral Health Service Providers Licensing Standards
	Baton Rouge, LA	Date Rule Takes Effect:	February 20, 2024

SUMMARY  
(Use complete sentences)

In accordance with Section 961 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$864 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule amends the provisions governing the licensing of behavioral health service (BHS) providers in order to add the definition of mental health partial hospitalization program, to remove the age restriction for use of mobile crisis response services, and to adopt licensing requirements governing BHS providers of mental health partial hospitalization programs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule may result in an indeterminable increase in state revenue collections in FY 23-24, FY 24-25, and FY 25-26, as BHS providers who choose to provide additional behavioral health services will be required to pay a nonrefundable application fee.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of BHS providers in order to add the definition of mental health partial hospitalization program, and to remove the age restriction for use of mobile crisis response services. This proposed rule also adopts licensing requirements governing BHS providers of mental health partial hospitalization programs. It is anticipated that implementation of this proposed rule may result in an indeterminable cost increase to BHS providers in FY 23-24, FY 24-25, and FY 25-26, since BHS providers who choose to provide additional behavioral health services will be required to pay a nonrefundable application fee.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This rule has no known effect on competition and employment.

Tasheka Dukes  
Signature of Head or Designee  
  
Tasheka Dukes, RN  
Deputy Assistant Secretary  
LDH Health Standards Section  
Typed Name & Title of Agency Head or Designee  
  
11/8/23  
Date of Signature

Patrice Thomas, Deputy Fiscal Officer  
Legislative Fiscal Officer or Designee  
  
11/08/2023  
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule amends the provisions governing the licensing of BHS providers in order to add the definition of mental health partial hospitalization program, and to remove the age restriction for use of mobile crisis response services. This proposed rule also adopts licensing requirements governing BHS providers of mental health partial hospitalization programs.

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

The Department of Health, Health Standards Section proposes to amend the provisions governing the licensing of BHS providers in order to add the definition of mental health partial hospitalization program, and to remove the age restriction for use of mobile crisis response services. This proposed rule also adopts licensing requirements governing BHS providers of mental health partial hospitalization programs.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. In FY 23-24, \$864 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) \_\_\_\_\_ YES. If yes, attach documentation.
- (b) \_\_\_\_\_ NO. If no, provide justification as to why this rule change should be published at this time

09/2023

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 24	FY 25	FY 26
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$864	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	\$0	\$0	\$0
EQUIPMENT	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
TOTAL	\$864	\$0	\$0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 23-24, \$864 will be spent for the state's administrative expenses for promulgation of this proposed rule and the final rule.

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

SOURCE	FY 24	FY 25	FY 26
STATE GENERAL FUND	\$864	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$0	\$0	\$0
OTHER (Specify)	\$0	\$0	\$0
TOTAL	\$864	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule has no known impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

09/2023

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 24	FY 25	FY 26
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	increase	increase	increase
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$0	\$0	\$0
LOCAL FUNDS	\$0	\$0	\$0
TOTAL	increase	increase	increase

\*Specify the particular fund being impacted.

Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

It is anticipated that implementation of this proposed rule may result in an indeterminable increase in state revenue collections in FY 23-24, FY 24-25, and FY 25-26, as BHS providers who choose to provide additional behavioral health services will be required to pay a nonrefundable application fee.



**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

**III. COSTS AND /OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS**

- A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

This proposed rule amends the provisions governing the licensing of BHS providers in order to add the definition of mental health partial hospitalization program and to remove the age restriction for use of mobile crisis response services. This proposed rule also adopts licensing requirements governing BHS providers of mental health partial hospitalization programs.

Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule may result in an indeterminable cost increase to BHS providers in FY 23-24, FY 24-25, and FY 25-26 as BHS providers who choose to provide additional behavioral health services will be required to pay a nonrefundable application fee.

**IV. EFFECTS ON COMPETITION AND EMPLOYMENT**

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no know effect on competition and employment.

09/2023