



State of Louisiana

Louisiana Department of Health
Office of the Secretary

February 7, 2024

Via Statutorily Prescribed Email

To: The Honorable Patrick McMath, Chairman, Senate Health & Welfare Committee
The Honorable Dustin Miller, Chairman, House Health & Welfare Committee

From: Ralph L. Abraham, M.D.
Secretary

By Michael Hampton

Re: Second Report to Proposed Amendments to LAC 48:I.5603, 5684, and 5690 – Behavioral Health Service Providers – Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Health Standards Section, submits its second report regarding the Proposed Amendments to Behavioral Health Service Providers – Licensing Standards, LAC 48:I.5603, 5684, and 5690.

A Notice of Intent on the proposed amendments was published in the November 20, 2023 issue of the *Louisiana Register* (LR 49:1983). No written comments were received and there was no request for a public hearing 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 amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the November 20, 2023, Notice of Intent when it is published as a final rule in the March 20, 2024, 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 Humbles, Executive Counsel, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

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. It is anticipated that implementation of this proposed rule may result in an indeterminable decrease in state revenue collections in FY 23-24, FY 24-25, and FY 25-26, as ADHC providers will no longer be required to pay a nonrefundable FNR application fee.~~

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

~~This proposed rule amends the provisions governing the licensing of ADHC centers in order to add and revise definitions, update the process for granting waivers to building and construction guidelines and requirements, remove requirements for FNR approval, and add provisions for an extension of the inactivation of license timeframe due to a declared or non-declared disaster or emergency. It is anticipated that implementation of this proposed rule may result in an indeterminable decrease in costs to ADHC's in FY 23-24, FY 24-25, and FY 25-26, since ADHC's will no longer be required to pay nonrefundable FNR application fees.~~

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

~~This proposed rule has no known effect on competition and employment.~~

Tashoka Dukes, RN
Deputy Assistant Secretary
2311#048

Patrice Thomas
Deputy Fiscal Office
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Health Standards Section**

Behavioral Health Service Providers
Licensing Standards
(LAC 48:I.5603, 5684, and 5690)

The Department of Health, Health Standards Section proposes to amend LAC 48:I.5603 and 5684, and to adopt 5690 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.

The Department of Health, Health Standards Section proposes to amend the provisions governing the licensing of behavioral health service (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. The department also proposes to adopt licensing requirements governing BHS providers of Mental Health Partial Hospitalization programs.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 56. Behavioral Health Service Providers

Subchapter A. General Provisions

§5603. Definitions

Mental Health Partial Hospitalization Program—professionally directed assessment, diagnosis, and treatment

provided in an organized non-residential treatment setting, including individual, group, family counseling and psycho-education, as well as medication management, medical and psychiatric examinations, and crisis mitigation coverage. Services may be offered during the day, before or after work or school, in the evening or on a weekend, and the program shall provide 20 or more hours of structured programming per week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1682 (September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1380 (July 2017), LR 46:587 (April 2020), LR 48:1277 (May 2022), LR 48:2755 (November 2022), LR 50:

Subchapter L. Additional Requirements for Mental Health Programs

§5684. Mobile Services

A. - C.9.d. ...

D. Mobile Crisis Response

1. Mobile crisis response services are an initial or emergent crisis intervention response intended to provide relief, resolution, and intervention provided by a mobile crisis response team (MCRT).

2. This service shall be provided under the supervision of a licensed mental health professional (LMHP) with experience regarding this specialized mental health service. The LMHP or physician shall be available at all times to provide back-up, support and/or consultation from assessment of risk and through all services delivered during a crisis.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:1284 (May 2022), amended by the Department of Health, Health Standards Section, LR 50:

§5690. Mental Health Partial Hospitalization Program (MHPHP)

A. The provider shall:

1. develop admission criteria that recognizes the dual-function of MHPHPs (i.e., that they can serve as both a step-down from hospitalization and as a preventative measure to hospitalization);

a. services may be offered during the day or evening hours, before or after work or on weekends, while also allowing the patient to apply their new skills and strategies in the community;

2. maintain a minimum of 20 contact hours per week for adults, at a minimum of three days per week;

3. maintain a minimum of 20 hours per week for children/adolescents, as specified in the patient's treatment plan, which may occur during school hours;

a. adolescents shall have access to educational services; or

b. the provider shall be able to coordinate with the school system to ensure that the adolescent's educational needs are met;

4. review and update the treatment plan in collaboration with the client as needed or at a minimum of every 30 days;

5. have the capability to provide:

- a. individual, group, and family therapy;
- b. crisis management/coverage capabilities;
- c. medication management capabilities; and
- d. basic case management services;

6. conduct a biopsychosocial assessment that must include an assessment for substance use/addiction, and refer to a proper level of care for addiction treatment, where indicated;

7. offer aftercare/continuing care group counseling services to people successfully completing a MHPHP; and

8. have a structured psychoeducational curriculum in place that covers, at a minimum, the following subjects:

- a. disease education (i.e., education on mental illness/various psychiatric illnesses);
- b. the role of medication and proper medication management in the treatment of psychiatric illnesses;
- c. education on co-occurring illnesses;
- d. education on developing a long-term recovery plan, and guidance towards getting grounded in community-based support programming geared towards people with chronic mental health challenges;
- e. education on symptom management;
- f. education on crisis management;
- g. education on the role of nutrition in the treatment of mental health issues; and
- h. education on the role of family/key personal stakeholders in a recovery plan.

B. Staffing. The provider shall ensure that:

1. a physician is on site as needed for the management of psychiatric and medical needs and on call 24 hours per day, seven days per week;

2. there is a clinical supervisor on-site 10 hours a week and on call 24 hours per day, seven days per week;

3. there is at least one LMHP on site when clinical services are being provided;

4. each LMHP/unlicensed professional's caseload does not exceed 1:25 active clients; and

5. there are nursing services available as needed to meet the nursing needs of the clients.

a. nursing services may be provided directly by the BHS provider or may be provided or arranged via written contract, agreement, policy, or other document. The BHS provider shall maintain documentation of such arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health, Health Standards Section, LR 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 may have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by expanding the availability of mental health services.

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 may have an indeterminable cost increase to small business providers who may apply to be licensed to provide Mental Health Partial Hospitalization Program services, since there is no way to determine how many of these providers will apply.

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 staffing level requirements or qualifications required to provide the same level of service, but may have an indeterminable increase in the direct or indirect cost to the provider and on the provider's ability to provide the same level of service as described in HCR 170, since there is no way to determine how many behavioral health service providers will apply to be licensed to provide Mental Health Partial Hospitalization Program services.

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. 49:961(B)(1) 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.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Behavioral Health Service Providers 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 \$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 NONGOVERNMENTAL 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 proposed rule has no known effect on competition and employment.

Tasheka Dukes, RN
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2311#049

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NOTICE OF INTENT

**Department of Health
Health Standards Section**

**Nurse Staffing Agencies—Licensing Standards
(LAC 48:I:Chapter 77)**

The Department of Health, Health Standards Section, proposes to amend LAC 48:I:Chapter 77 as authorized by R.S. 36:254 and 40:2120.11 et seq. 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 nurse staffing agencies in order to add and update definitions, adjust social media policy requirements, revise administrator requirements, and modify initial licensure and change of ownership requirements.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 77. Nurse Staffing Agencies Licensing Standards

Subchapter A. General Provisions

§7703. Definitions

~~Client~~—the licensed healthcare facility or agency to which the registered nurse, licensed practical nurse, or certified nursing assistant is assigned an initial employment, assignment, or referral term for an undefined term, or an initial term of less than twenty four continuous months exclusive of any extension.

~~Digital/Smart Phone Application~~—a computer program or software application operated by an agency that maintains data of nurses or certified nurse aides for purposes of referring the nurse or certified nurse aide directly to a healthcare facility through the digital/smart phone application.

~~Digital Website/Platform~~—an online webpage or technology platform operated by an agency that maintains data of nurses or certified nurse aides submitted to the agency online, for purposes of referring the nurse or certified nurse aide directly to a healthcare facility by the digital website/platform agency.

~~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. 3. ...~~

~~AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.~~

~~HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:1729 (October 2023), amended by the Department of Health, Health Standards Section, LR 50:~~

~~§7707. Initial Licensure Application Process~~

~~A. B. 7. ...~~

~~8. a completed disclosure of ownership and control form;~~

~~9. a statement of the days and hours of operation; and~~

~~10. any other relevant documentation or information required by the department for licensure.~~

~~11. Repealed.~~

~~C. F. ...~~

~~AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.~~

~~HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:1730 (October 2023), amended by the Department of Health, Health Standards Section, LR 50:~~