



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.Chapter 42 – Adult Day Health Care – 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 Adult Day Health Care – Licensing Standards, LAC 48:I.Chapter 42.

A Notice of Intent on the proposed amendments was published in the November 20, 2023 issue of the *Louisiana Register* (LR 49:1980). 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

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

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.

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.

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.

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.

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
RULE TITLE: Adult Day Health Care
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.

This proposed rule amends the provisions governing the licensing of adult day health care (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 facility need review (FNR) approval, and add provisions for an extension of the inactivation of license timeframe due to a declared or non-declared disaster or emergency.

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.

Tasheka Dukes, RN
Deputy Assistant Secretary
2311#048

Patrice Thomas
Deputy Fiscal Office
Legislative Fiscal Office