

## 3. The bathrooms shall be outfitted as follows.

a. All plumbing and piping connections to fixtures shall be enclosed and not accessible to tampering by patients.

b. The doors on the toilet rooms shall swing out or be double hinged.

c. If mirrors are located in the toilet rooms, they shall be fabricated with laminated safety glass or protected by polycarbonate laminate, or safety screens.

d. Bathroom/toilet room hardware and accessories shall be of special design to give consideration to the prevention of injury and suicide.

4. Shower sprinkler heads shall be recessed or of a design to minimize patient tampering.

H. The Level II CRC-SU shall have a separate bathroom and a break room designated for staff use.

I. Separate and apart from the seclusion room required in a Level I CRC-SU, the Level II CRC-SU shall have a minimum of one seclusion room for each capacity for 12 patients.

1. The seclusion room in the Level II CRC-SU shall meet the same requirements specified for the seclusion room in the Level I CRC-SU.

2. The patient rooms in the Level II CRC-SU may be used as seclusion rooms provided they meet the same requirements as specified for the seclusion room in the Level I CRC-SU.

J. The Level II CRC-SU shall have separate consultation room(s) with a minimum floor space of 100 square feet each, provided at a room-to-bed ratio of one consultation room for each capacity for 12 patients. Consultation rooms within the unit shall be available for use for interviews with the patient and/or their families. The consultation room(s) shall be designed for acoustical and visual privacy.

K. The Level II CRC-SU shall have a room with a minimum of 225 square feet for group therapy, treatment team planning and conferencing.

L. The Level II CRC-SU shall have a room within the unit with a minimum of 120 square feet for examination and treatment of patients.

M. The Level II CRC-SU shall have an area for accommodation of charting, storage of records, and the storage and preparation of medications. Provisions shall be made for securing patient records and medications in this area.

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, Bureau of Health Services Financing, LR 36:518 (March 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 45:557 (April 2019).

## Chapter 97. Nursing Facilities

### Subchapter A. General Provisions

#### §9701. Definitions

*Abuse*—the willful infliction of injury or the causing of the deterioration of a resident by means including, but not limited to, physical, verbal, emotional, psychological, sexual abuse, exploitation, or extortion of funds or other things of value to such an extent that the resident's health, moral, or emotional well-being is endangered.

1. The determination of abuse shall not be mitigated by a resident's age, ability to comprehend or disability. Abuse determination shall be based on the reasonable person concept.

*Administrator*—any individual who is or may be charged with the general administration of a nursing facility and who has been licensed and registered by the Board of Examiners of Nursing Home Administrators in accordance with the provisions of *Louisiana Revised Statute 37:2501*.

*Advanced Practice Registered Nurse (APRN)*—a licensed registered nurse who is certified by a nationally recognized certifying body as having an advanced nursing specialty and who meets the criteria for an advanced practice registered nurse as established by the Louisiana State Board of Nursing. An advanced practice registered nurse shall include:

1. certified nurse midwife;
2. certified registered nurse anesthetist;
3. clinical nurse specialist; or
4. nurse practitioner.

*Alzheimer's Special Care Unit*—any nursing facility as defined in R.S. 40:2009.2, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the nursing facility as providing specialized Alzheimer/dementia care services.

*Ancillary Service*—a service such as, but not limited to:

1. podiatry;
2. dental;
3. audiology;
4. vision;
5. physical therapy;
6. speech pathology;
7. occupational therapy
8. psychological; and
9. social services.

*Applicant*—the legal entity that applies for the license to open, conduct, manage or maintain a nursing facility.

*Biological*—a preparation used in the treatment or prevention of disease that is derived from living organisms or their by-product.

*Change of Information (CHOI)*—any change in facility information required by regulation or statute to be submitted to the department that does not change the ownership structure and/or respective ownership interests held by stakeholders of the current legal entity.

*Change of Ownership (CHOW)*—any change in the legal entity responsible for the operation of the nursing facility. Management agreements are generally not changes of ownership if the former owner continues to retain policy responsibility and approve or concur in decisions involving the nursing facility's operation. However, if these ultimate legal responsibilities, authorities and liabilities are surrendered and transferred from the former owner to the new manager, then a change of ownership has occurred. Examples of actions that constitute a change of ownership include, but are not limited to:

1. *unincorporated sole proprietorship*—transfer of title and property of another party constitutes change of ownership;

2. *corporation*—the merger of the provider's corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation, constitutes change of ownership:

a. transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute a change of ownership. Admission of a new member to a nonprofit corporation is not a change of ownership;

3. *limited liability company*—the removal, addition or substitution of a member in a limited liability company does not constitute a change of ownership; or

4. *partnership*—in the case of a partnership, the removal, addition or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable state law, constitutes a change of ownership.

*Charge Nurse*—an individual who is licensed by the state of Louisiana to practice as an RN or LPN and designated as a charge nurse by the nursing facility.

*Chemical Restraint*—a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

*Controlled Dangerous Substance*—a drug, substance or immediate precursor in schedule I through V of R.S. 40:964.

*Coronavirus Disease 2019 (COVID-19)*—a communicable, contagious, and infectious disease/virus (more specifically, a coronavirus) identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China. COVID-19 is a new disease, caused by a novel (or new) coronavirus that has not previously been seen in

humans. Persons with COVID-19 have had a wide range of symptoms reported—ranging from mild symptoms to severe illness.

*Culture Change*—the common name given to the national movement for the transformation of older adult services, based on person-directed values and practices where the voices of elders and those working with them are considered and respected. Core person-directed values are:

1. choice;
2. dignity;
3. respect;
4. self-determination; and
5. purposeful living.

*Designated Contact*—resident's legal representative or interested family member.

*Dietary Manager*—a person who:

1. is a licensed dietitian;
2. is a graduate of a dietetic technician program;
3. has successfully completed a course of study, by correspondence or classroom, which meets the eligibility requirements for certification by the Dietary Manager's Association;
4. has successfully completed a training course at a state approved school (vocational or university) which includes course work in foods, food service supervision and diet therapy. Documentation of an eight-hour course of formalized instruction in diet therapy conducted by the employing nursing facility's qualified dietitian is permissible if the course meets only the foods and food service supervision requirements; or
5. is currently enrolled in an acceptable course of not more than 12 months which will qualify an individual upon completion.

*Director of Nursing (DON)*—a registered nurse, licensed by the state of Louisiana, who directs and coordinates nursing services in a nursing facility.

*Drug Administration*—an act in which a single dose of a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such acts. The complete act of administration entails:

1. removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container);
2. verifying the dose with the physician's orders;
3. giving the individual dose to the proper resident;
4. monitoring the ingestion of the dose; and
5. promptly recording the time and dose given.

*Drug Dispensing*—an act which entails the interpretation of an order for a drug or biological and, pursuant to the order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological for a resident or for a service unit of the nursing facility by a licensed pharmacist, physician or dentist.

*Legal Representative*—a resident's legal guardian or other responsible person as determined by the specific legally recognized status of the relationship (e.g., full interdiction, partial interdiction, continuing tutorship, competent major, or other legally recognized status).

*Licensed Bed*—a bed set up, or capable of being set up, within 24 hours in a nursing facility for the use of one resident.

*Licensed Dietitian*—a dietitian who is licensed to practice by the Louisiana Board of Examiners in Dietetics and Nutrition.

*Licensed Practical Nurse (LPN)*—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana.

*Locked Unit or Specialized Care Unit*—a restricted section or area of the nursing facility which limits free access of residents suffering from severe dementia, Alzheimer's or other disease process or condition which severely impairs their ability to recognize potential hazards. Such units shall not be established for the sole purpose of housing individuals with mental illness.

*Louisiana Department of Health (LDH)*—the 'department', previously known as the Department of Health and Hospitals or DHH.

*LSC Appeal*—equivalent method of compliance related to *Life Safety Code (LSC)* requirements for participation, granted or approved by state and/or federal certification agencies.

*Major Alteration*—any repair or replacement of building materials and equipment which does not meet the definition of minor alteration.

*Medication Attendant Certified (MAC)*—a person certified by LDH to administer medications to nursing facility residents.

*Medical Director*—a physician licensed in Louisiana who directs and coordinates medical care in a nursing facility.

*Minor Alteration*—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction below that which existed prior to the alteration. This does not include any alteration to the function or original design of the construction.

*Misappropriation*—taking possession of a resident's personal belongings without the resident's permission to do so, or the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

*Neglect*—the failure to provide the proper or necessary medical care, nutrition or other care necessary for a resident's well-being, unless the resident exercises his/her right to refuse the necessary care.

*Nursing Facility*—any private home, institution, building, residence or other place, serving two or more persons who are not related by blood or marriage to the operator, whether operated for profit or not, and including those places operated by a political subdivision of the state of Louisiana which undertakes, through its ownership or management, to provide maintenance, personal care, or nursing services for persons who, by reason of illness or physical infirmity or age, are unable to properly care for themselves. The term does not include the following:

1. a home, institution or other place operated by the federal government or agency thereof, or by the State of Louisiana;

2. a hospital, sanitarium or other medical institution whose principal activity or business is the care and treatment of persons suffering from tuberculosis or from mental diseases;

3. a hospital, sanitarium or other medical institution whose principal activity or business is the diagnosis, care and treatment of human illness through the maintenance and operation of organized facilities;

4. any municipal, parish or private child welfare agency, maternity hospital or lying-in home required by law to be licensed by some department or agency;

5. any sanitarium or institution conducted by and for Christian Scientists who rely on the practice of Christian Science for treatment and healing;

6. any nonprofit congregate housing program which promotes independent living by providing assistance with daily living activities such as cooking, eating, dressing, getting out of bed and the like to persons living in a shared group environment who do not require the medical supervision and nursing assistance provided by nursing facilities. No congregate housing program, except those licensed or operated by the state of Louisiana, shall:
  - a. use the term "nursing facility" or any other term implying that it is a licensed health care facility; or
  - b. administer medications or otherwise provide any other nursing or medical service; or

7. any adult residential care facility.

*Physical Restraint*—any physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

*Physician*—an individual currently licensed by the Louisiana State Board of Medical Examiners to practice medicine and/or surgery in Louisiana.

*Physician Assistant*—a person who is a graduate of a program accredited by the Council on Medical Education of the American Medical Association or its successors, or who

has successfully passed the national certificate examination administered by the National Commission on the Certification of Physicians' Assistants, or its predecessors, and who is approved and licensed by the Louisiana Board of Medical Examiners to perform protocol services under the supervision of a physician or group of physicians approved by the board to supervise such assistant.

*Reasonable Person Concept*—the degree of actual or potential harm one would expect a reasonable person in a similar situation to suffer as a result of alleged abuse, neglect or misappropriation of a resident's funds.

*Registered Nurse (RN)*—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

*Registered Pharmacist*—an individual currently licensed by the Louisiana Board of Pharmacy to practice pharmacy in Louisiana.

*Resident*—an individual admitted to the nursing facility by, and upon, the recommendation of a physician, and who is to receive the medical and nursing care ordered by the physician.

*Resident Activities Director*—an individual responsible for directing or providing the activity services of a nursing facility.

*Resident Communication System*—a system that registers calls electronically from its place of origin (the resident's bed, toilet or bathing facility) to the place of receivership.

*Restorative Care*—activities designed to resolve, diminish or prevent the needs that are inferred from the resident's problem; includes the planning, implementation and evaluation of said activities.

*Sheltering in Place*—the election to stay in place rather than evacuate when an executive order or proclamation of emergency or disaster is issued for the parish in which the nursing facility is located and a voluntary or mandatory evacuation has been declared for its geographic location.

*Social Service Designee*—an individual responsible for arranging or directly providing medically-related social services in the facility to assist in attaining and maintaining the highest practicable physical, mental, and psychosocial well-being of each resident.

*Specialized Mental Health Services*—for the purposes of pre-admission screening and resident review (PASRR), specialized services means any service or support recommended by an individualized level II determination that a particular nursing facility resident requires due to mental illness, intellectual disability or related condition, that supplements the scope of services that the nursing facility must provide under reimbursement as nursing facility services.

*Specialized Rehabilitative Services*—include, but are not limited to:

1. physical therapy;

2. speech language pathology;
3. occupational therapy; and
4. mental health rehabilitative services.

*Sponsor*—an adult relative, friend or guardian of a resident who has an interest or responsibility in the resident's welfare.

*State Fire Marshal (OSFM)*—Louisiana Department of Public Safety and Corrections, Office of the State Fire Marshal.

*Written Notification*—notification in hard copy or electronic format.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1891 (November 2016), amended LR 46:1393 (October 2020).

### §9703. Licensing Process

A. All nursing facilities shall be licensed by the department. It shall be unlawful to operate a nursing facility without possessing a current, valid license issued by the department. The department is the only licensing authority for nursing facilities in Louisiana. Each nursing facility shall be separately licensed.

B. An institution that is primarily for the care and treatment of mental diseases cannot be a skilled nursing facility or nursing facility.

C. A nursing facility shall be in compliance with all required federal, state and local statutes, laws, ordinances, rules, regulations and fees.

D. A nursing facility license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the nursing facility to which it is issued and only for the specific geographical address of that nursing facility;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, modified or terminated prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the nursing facility;
5. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

E. A separately licensed nursing facility shall not use a name which is substantially the same as the name of another such nursing facility licensed by the department, unless such nursing facility is under common ownership with other nursing facilities.

F. No branches, satellite locations or offsite campuses shall be authorized for a nursing facility.

G. No new nursing facility shall accept residents until the nursing facility has written approval and/or a license issued by the department.

H. Notice of Fees. Fees shall be required for:

1. a replacement license for changes such as:
  - a. name;
  - b. address; or
  - c. bed capacity;
2. a duplicate license; and
3. a change in licensee or premises.

I. Plan Review. Construction documents (plans and specifications), plan review application and applicable plan review fees as established by the Office of State Fire Marshal (OSFM) are required to be submitted, reviewed and found to be acceptable for licensure by the OSFM as part of the licensing procedure prior to obtaining an initial license.

J. Construction Document Preparation. Construction documents shall be submitted to OSFM in accordance with OSFM requirements.

K. Any increase in licensed bed capacity requires facility need review approval (FNR) and a plan review, as applicable by state law.

L. LSC Appeal Request Equivalent Methods of Compliance. OSFM may accept equivalent methods of compliance with the physical environment provisions of these rules in consultation with LDH.

1. If a *Life Safety Code* (LSC) appeal is requested, the nursing facility shall:

- a. submit the LSC appeal request and applicable fees as established by OSFM to OSFM;
- b. demonstrate how patient safety and quality of care offered is not compromised by the LSC appeal request;
- c. demonstrate the undue hardship imposed on the nursing facility if the LSC appeal request is not granted; and
- d. demonstrate its ability to completely fulfill all other requirements of service.

2. The OSFM will make a written determination of the requests.

a. LSC appeal request determinations are subject to review in any change in circumstance and are subject to review or revocation upon any change in circumstances related to the LSC appeal determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1893 (November 2016).

### **§9705. Initial Licensing Application Process**

A. An initial application for licensing as a nursing facility shall be obtained from the department. A completed

initial license application packet for a nursing facility shall be submitted to and approved by the department prior to an applicant providing nursing facility services. The completed initial licensing application packet shall include:

1. a completed nursing facility licensure application and the non-refundable licensing fee as established by statute. All fees shall be submitted by certified or company check or U.S. Postal money order only, made payable to the department. All state owned nursing facilities are exempt from fees;
2. a copy of the released architectural plan review project report for the nursing facility from OSFM;
3. a copy of the on-site inspection report with determination as acceptable for occupancy by OSFM;
4. a copy of the health inspection report with approval of occupancy from the Office of Public Health (OPH);
5. a disclosure of the name and address of all individuals with 5 percent or more ownership interest, and in the instance where the nursing facility is a corporation or partnership, the name and address of each officer or director, and board members;
6. a disclosure of the name of the management firm and employer identification number, or the name of the lessor organization, if the nursing facility is operated by a management company or leased in whole or in part by another organization;
7. if applicable, clinical laboratory improvement amendments (CLIA) certificate or CLIA certificate of waiver;
8. a floor sketch or drawing of the premises to be licensed; and
9. any other documentation or information required by the department for licensure.

B. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of the notification to submit the additionally requested information. If the additionally requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a nursing facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

C. Once the initial licensing application packet has been approved by the department, notification of the approval shall be forwarded to the applicant. Within 90 days of receipt of the approval notification, the applicant must notify the department that the nursing facility is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application has been closed, an applicant who is still interested in becoming a nursing facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

D. Applicants shall be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the nursing facility will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1894 (November 2016).

### §9707. Types of Licenses

A. The department shall have the authority to issue the following types of licenses.

1. Full Initial License. The department shall issue a full license to the nursing facility when the initial licensing survey finds that the nursing facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations and fees. The initial license shall specify the capacity of the nursing facility. The license shall be valid for a period of 12 months unless the license is modified, revoked, suspended, or terminated.

2. Provisional Initial License. The department may issue a provisional initial license to the nursing facility when the initial licensing survey finds that the nursing facility is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the residents or participants. The provisional license shall be valid for a period not to exceed six months.

a. At the discretion of the department, the provisional initial license may be extended for an additional period not to exceed 90 days in order for the nursing facility to correct the noncompliance or deficiencies.

b. The nursing facility shall submit a plan of correction to the department for approval and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional initial license.

c. A follow-up survey shall be conducted prior to the expiration of the provisional initial license.

i. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, a full license may be issued.

ii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional initial license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee if no timely informal reconsideration or administrative appeal of the deficiencies is filed pursuant to this Chapter.

3. Annual Renewal License. The department may issue a full license that is annually renewed to an existing licensed nursing facility, which is in substantial compliance

with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations.

a. The nursing facility shall submit:

i. a completed application;

ii. appropriate fees; and

iii. any other documentation or information that is required by the department for license renewal.

b. The license shall be valid for a period of 12 months unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department, in its sole discretion, may issue a provisional license to an existing licensed nursing facility for a period not to exceed six months.

a. At the discretion of the department, the provisional license may be extended for an additional period not to exceed 90 days in order for the nursing facility to correct the noncompliance or deficiencies.

b. When the department issues a provisional license to an existing licensed nursing facility, the provider shall submit a plan of correction to the department for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

c. The department shall conduct an on-site follow-up survey at the nursing facility prior to the expiration of the provisional license.

i. If the on-site follow-up survey determines that the nursing facility has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the nursing facility license.

ii. If the on-site follow-up survey determines that the nursing facility has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee if no timely informal reconsideration or administrative appeal of the deficiencies is filed pursuant to this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1895 (November 2016).

### §9709. Changes in Licensee Information

A. Any change regarding the nursing facility name, "doing business as" name, mailing address, phone number or any combination thereof, shall be reported in writing to the department within five days of the change. Any change regarding the nursing facility name or "doing business as" name requires a change to the nursing facility license and

shall require the appropriate fee for the issuance of an amended license.

B. A change of ownership (CHOW) of the nursing facility shall be reported in writing to the department at least five days prior to the change of ownership.

1. The license of a nursing facility is not transferable or assignable. The license cannot be sold.

2. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all of the application requirements are completed and approved by the department, a new license shall be issued to the new owner.

3. A nursing facility that is under license revocation, provisional licensure or denial of license renewal may not undergo a CHOW.

C. Any request for a duplicate license shall be accompanied by the appropriate fee.

D. A nursing facility that intends to change the physical address of its geographic location is required to have OSFM approval for plan review and approval for occupancy of the new location, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the occupancy of the new location to be licensed.

1. Written notice of intent to relocate shall be submitted to HSS at the time plan review request is submitted to OSFM.

2. Relocation of the nursing facility's physical address results in a new anniversary date and the full licensing fee shall be paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1895 (November 2016).

### **§9711. Renewal of License**

A. To renew a license, a nursing facility shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The licensure application packet shall include:

1. the license renewal application;
2. a copy of the current onsite inspection report with approval of occupancy from OSFM and the Office of Public Health;
3. the licensure renewal fee; and
4. any other documentation required by the department.

B. the department may perform an onsite survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the nursing facility license.

D. The renewal of a license does not in any manner affect any sanction, civil fine, or other action imposed by the department imposed against the nursing facility.

E. If an existing licensed nursing facility has been issued a notice of license revocation, suspension, or termination, and the nursing facility license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1896 (November 2016).

### **§9713. Licensing Surveys**

A. Prior to the initial license being issued to the nursing facility, an initial licensing survey shall be conducted on-site at the nursing facility to assure compliance with licensing standards. The nursing facility shall not provide services to any resident until the initial licensing survey has been performed and the nursing facility found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

B. Once an initial license has been issued, the department may conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations and fees. These surveys shall be unannounced.

C. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices. The department shall issue written notice to the provider of the results of the follow-up survey.

D. An acceptable plan of correction shall be required for any survey where deficiencies have been cited.

E. If deficiencies have been cited during a licensing survey, the department may issue appropriate sanctions, including but not limited to:

1. civil fines;
2. directed plans of correction;
3. denial of license renewal;
4. provisional licensure;
5. license revocation; or
6. any other sanctions or actions authorized under state law or regulation.

F. Surveyors and staff, on behalf of the department, shall be:

1. given access to all areas of the nursing facility and all relevant files during any licensing survey or other survey; and

2. allowed to interview any facility staff, resident, or participant as necessary to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1896 (November 2016).

#### **§9715. Statement of Deficiencies**

A. Notice to nursing facility of statement of deficiencies. When the department has reasonable cause to believe through an on-site survey, a complaint investigation, or other means that there exists or has existed a threat to the health, safety, welfare or rights of a nursing facility resident, the department shall give written notice of the deficiencies.

B. The survey team shall conduct an exit conference and give the nursing facility administrator or his/her designee the preliminary finding of fact and the possible deficiencies before leaving the nursing facility.

C. The department shall send confirmed written notice to the nursing facility administrator.

D. The department's written notice of deficiencies shall be consistent with the findings delineated at the conference and shall:

1. specify the deficiencies;
2. cite the legal authority which established such deficiencies; and
3. inform the administrator that the nursing facility has 10 calendar days from receipt of written notice within which to request a reconsideration of the proposed agency action.

E. Any statement of deficiencies issued by the department to the nursing facility shall be posted in a conspicuous place on the licensed premises.

F. In accordance with R.S. 40:2010.10, all nursing facilities shall provide notification to the applicant during the admission process that the applicant may receive a copy of the annual licensing survey as well as the telephone number to report complaints, and the applicant shall sign stating they have been so notified.

G. Any statement of deficiencies issued by the department to a nursing facility shall be available for disclosure to the public 14 days following the date the statement of deficiency is made available to the nursing facility.

H. Unless otherwise provided in statute or in this licensing rule, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The provider's written request for informal reconsideration shall be considered timely if received within 10 calendar days of facility's receipt of the statement of deficiencies.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section.

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.13 et seq., and as provided for license denials, revocations, and denial of license renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

5. The provider shall be notified in writing of the results of the informal reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1896 (November 2016).

#### **§9717. Initial License Denial, Revocation or Denial of Renewal of License**

A. The department also may deny, suspend or revoke a license where there has been substantial noncompliance with these requirements in accordance with R.S. 40:2009.1 et seq., the nursing home licensing law. If a license is denied, suspended, or revoked, an appeal may be requested.

B. The department may deny an application for a license, may deny a license renewal or may revoke a license in accordance with the provisions of the Administrative Procedure Act.

C. Denial of an Initial License. The department may deny an initial license in the event that the initial licensing survey finds that the nursing facility is noncompliant with any licensing laws or regulations that present a potential threat to the health, safety, or welfare of the residents.

1. The department shall deny an initial license in the event that the initial licensing survey finds that the nursing facility is noncompliant with any other required statutes, laws, ordinances, rules or regulations that present a potential threat to the health, safety or welfare of the residents.

2. The department shall deny an initial license for any of the reasons in this Rule that a license may be revoked or non-renewed.

D. Voluntary Non-Renewal of a License. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

E. Revocation of License or Denial of License Renewal. A nursing facility license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:



1. failure to be in substantial compliance with the nursing facility licensing laws, rules and regulations;
2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules, or regulations;
3. failure to be in substantial compliance with the terms and provisions of a settlement agreement;
4. failure to uphold resident rights whereby deficient practices may result in harm, injury, or death of a resident;
5. failure to protect a resident from a harmful act of an employee or other resident including, but not limited to:
  - a. abuse, neglect, exploitation, or extortion;
  - b. any action posing a threat to a resident's health and safety;
  - c. coercion;
  - d. threat or intimidation; or
  - e. harassment;
6. failure to notify the proper authorities of all suspected cases of neglect, criminal activity, mental or physical abuse, or any combination thereof;
7. knowingly making a false statement, or providing false, forged or altered information or documentation to LDH employees or to law enforcement in any of the following areas, including but not limited to:
  - a. application for initial license or renewal of license; or
  - b. matters under investigation by the department or the Office of the Attorney General;
8. the use of false, fraudulent or misleading advertising;
9. fraudulent operation of a nursing facility by the owner, administrator or manager;
10. an owner, officer, member, manager, administrator or person designated to manage or supervise participant care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court;
  - a. for purposes of this paragraph, conviction of a felony means a felony relating to the violence, abuse, or negligence of a person, or a felony relating to the misappropriation of property belonging to another person;
11. failure to comply with all reporting requirements in a timely manner as required by the department;
12. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview facility staff or residents individually as necessary to conduct the survey;
13. failure to allow or refusal to allow access to records by personnel authorized by LDH; or

14. bribery, harassment, or intimidation of any residents designed to cause that resident to use the services of any particular nursing facility.

F. In the event a nursing facility license is revoked or renewal is denied any owner, officer, member, manager, director or administrator of such nursing facility may be prohibited from owning, managing, directing or operating another nursing facility for a period of two years from the date of the final disposition of the revocation or denial action.

1. For any of the above positions affected by employment prohibitions, the department shall consider the involvement, responsibilities and authority of the individual(s) affected by such employment prohibition, as well as associated circumstances involving license revocation or denial of license renewal.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1897 (November 2016).

**§9719. Notice and Appeal of Initial License Denial, License Revocation and Denial of License Renewal**

A. Notice of an initial license denial, license revocation or denial of license renewal shall be given to the provider in writing.

B. The provider has a right to an informal reconsideration of the initial license denial, license revocation, or denial of license renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The provider's request for informal reconsideration shall be considered timely if received within 15 calendar days of the notice of the initial license denial, license revocation, or denial of license renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the provider will receive written notification.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the initial license denial, revocation or denial of license renewal shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The provider has a right to an administrative appeal of the initial license denial, license revocation, or denial of license renewal.

1. The provider shall request the administrative appeal within 30 days of the receipt of the results of the informal reconsideration. The provider may forego its rights to an informal reconsideration, and if so, the provider shall request the administrative appeal within 30 days of the receipt of the notice of the initial license denial, license revocation, or denial of license renewal. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law (DAL).

2. The request for administrative appeal shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the DAL, the administrative appeal of the license revocation or denial of license renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department, or his/her designee, determines that the violations of the nursing facility pose an imminent or immediate threat to the health, welfare or safety of a participant, the imposition of the license revocation or denial of license renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the nursing facility shall be notified in writing.

4. Correction of a violation or a deficiency which is the basis for the initial license denial, revocation or denial of license renewal, shall not be a basis for the administrative appeal.

D. If an existing licensed provider has been issued a notice of license revocation and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the provider on an initial license denial, denial of license renewal, or license revocation, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

1. If the final decision is to reverse the initial license denial, the denial of license renewal, or the license revocation, the provider's license will be re-instated or granted upon the payment of any licensing or other fees due to the department.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial

license to a new provider. An existing provider who has been issued a provisional license remains licensed and operational and also has no right to an informal reconsideration or an administrative appeal of the issuance of the provisional license. The issuance of a provisional license to an existing provider is not considered to be a denial of initial licensure, a denial of license renewal, or a license revocation.

1. A follow-up survey shall be conducted prior to the expiration of a provisional initial license to a new provider or the expiration of a provisional license to an existing provider.

2. A new provider that is issued a provisional initial license or an existing provider that is issued a provisional license shall be required to correct all noncompliance or deficiencies at the time the follow-up survey is conducted.

3. If all noncompliance or deficiencies have not been corrected at the time of the follow-up survey, or if new deficiencies that are a threat to the health, safety, or welfare of residents are cited on the follow-up survey, the provisional initial license or provisional license shall expire on its face.

4. The department shall issue written notice to the provider of the results of the follow-up survey.

5. A provider with a provisional initial license or an existing provider with a provisional license who has deficiencies cited at the follow-up survey shall have the right to an informal reconsideration and the right to an administrative appeal of the deficiencies cited at the follow up survey.

a. The correction of a violation, noncompliance or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

b. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

c. The facility's written request for informal reconsideration shall be considered timely if received within five calendar days of the notice of the results of the follow-up survey from the department.

d. The provider shall request the administrative appeal within 15 calendar days of the notice of the results of the follow-up survey from the department.

e. The provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this section shall cease providing services unless the DAL issues a stay of the expiration. The stay shall only be granted by the DAL in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1898 (November 2016).

**§9721. Cessation of Business**

A. Except as provided in Section §9767.K-M of these licensing regulations, a license shall be immediately null and void if a facility ceases to operate.

B. A cessation of business is deemed to be effective the date on which the nursing facility stopped offering or providing services to the community.

C. Upon the cessation of business, the nursing facility shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the nursing facility. The provider does not have a right to appeal a cessation of business.

E. The nursing facility shall notify the department in writing 30 days prior to the effective date of the closure or cessation. In addition to the notice, the provider shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure.;
2. provisions that comply with federal and state laws on storage, maintenance, access and confidentiality of the closed provider's patients medical records;
3. an appointed custodian(s) who shall provide the following:
  - a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and
  - b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction; and
4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing nursing facility, at least 15 days prior to the effective date of closure.

F. Failure to comply with the provisions concerning submission of a written plan for the disposition of patient medical records to the department may result in the provider being prohibited from obtaining a license for any provider type issued by the department.

G. Once the nursing facility has ceased doing business, the nursing facility shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1899 (November 2016).

**§9723. Complaint Process**

A. Any person who has knowledge of any of the following circumstances that could affect the health and well-being of a nursing facility resident may submit a complaint regarding the matter in writing or by telephone to

the Louisiana Department of Health, Health Standards Section:

1. the alleged abuse or neglect of a nursing facility resident;
2. violation of any state law, licensing rule or regulation, or federal certification rule pertaining to a nursing facility; or
3. that a nursing facility resident is not receiving the care and treatment to which he is entitled under state or federal laws.

B. Prohibition Against Retaliation. No discriminatory or retaliatory action shall be taken by a nursing facility against any person or resident who provides information to the department or any other governmental agency, provided the communication was made for the purpose of aiding the department in carrying out its duties and responsibilities.

1. Any person, who in good faith, submits a complaint pursuant to this Section, shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

C. Notice of Complaint Procedure. Notices of how to lodge a complaint with the department, the Office of Civil Rights, the Americans with Disabilities Act, and/or the Medicaid Fraud Control Unit shall be posted conspicuously in the nursing facility in an area accessible to residents. The notices shall include the addresses and toll-free complaint telephone numbers for the Health Standards Section (HSS) and other governmental agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1899 (November 2016).

**§9725. Complaint Surveys**

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13 et seq.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction shall be submitted to the department for any complaint survey where deficiencies have been cited.

D. An on-site follow-up survey or a desk review may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices.

E. For deficiencies cited for non-compliance with any complaint survey, the department may issue appropriate sanctions, including but not limited to:

1. civil fines;
2. directed plans of correction;
3. denial of license renewal;
4. provisional licensure;

5. license revocation; or

6. any other sanctions or actions authorized under state law or regulation.

F. LDH surveyors and staff shall be given access to all areas of the nursing facility and all relevant files during any complaint survey. LDH surveyors and staff shall be allowed to interview any facility staff or resident, as necessary or required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1899 (November 2016).

### §9727. Incident Reporting Requirements

A. A nursing facility shall have written procedures for the reporting and documentation of actual and suspected incidents of abuse, neglect, misappropriation of property/funds and suspicious death. Major injuries of unknown origin (e.g., fractures, burns, suspicious contusions, head injuries, etc.) for which the nursing facility is unable to determine the cause and could possibly be the result of abuse or neglect shall also be reported. Such procedures shall ensure that:

1. a resident is protected from harm during an investigation;

2. immediate verbal reporting is made and a preliminary written report within 24 hours of the incident is submitted to the administrator or his/her designee;

3. notification, as required by HSS, is submitted to HSS within 24 hours of occurrence or discovery of the incident. The nursing facility shall utilize the LDH online tracking incident system (OTIS) or current LDH required database reporting system to provide notification;

NOTE: The nursing facility is required to maintain internet access and to keep the department informed of an active e-mail address at all times.

4. appropriate authorities are to be notified according to state law;

5. immediate, documented attempts are made to notify the resident's legal representative;

6. immediate attempts are made to notify other involved agencies and parties as appropriate; and

7. immediate notification is made to the appropriate law enforcement authority whenever warranted.

B. The initial written notification submitted to the LDH HSS within 24 hours of occurrence or discovery of the incident shall include:

1. the name of the alleged victim;

2. the name of the accused (if known);

3. the incident category (if applicable);

4. the date and time the incident occurred, if known, and the date and time the incident was discovered;

5. a description of the alleged abuse, neglect, misappropriation of property, and incident of unknown origin from the victim and/or the reporter;

6. documentation of any action taken to protect the resident during the investigation; and

7. any other relevant information available at the time the report is submitted.

C. The nursing facility shall have evidence that the alleged violations are thoroughly investigated and shall ensure protection of the resident from further potential abuse, neglect, and misappropriation of property/funds while the investigation is in progress.

D. A final report with the results of all investigations shall be reported to HSS within five working days of the incident through the use of OTIS or current LDH required database reporting system. The report shall include:

1. the alleged victim's name, date of birth, and a complete description of the physical harm, pain or mental anguish;

2. the name, date of birth, address and telephone number of the accused. If the accused is a nursing facility employee, include the Social Security number.

3. the date and time the incident occurred, if known, and the date and time the incident was discovered;

4. a description of the alleged abuse, neglect, misappropriation of property, and incident of unknown origin;

5. a detailed summary of the entity's investigation including all witness' information and all facts that lead to the determination of substantiated, unsubstantiated or unable to verify:

a. immediate action taken to protect the alleged victim during the investigation; and

b. any action taken toward the accused; and

6. nursing facility administrator/CEO finding.

E. If an alleged violation is verified, the nursing facility shall take appropriate corrective action.

F. If the investigation substantiates abuse, neglect, and/or misappropriation of property against a CNA, the following shall be available, if requested, by HSS:

1. a copy of the NAT-7 verifying termination;

2. the nursing facility abuse policy signed by the CNA;

3. the date and time the incident occurred;

4. the date and time the incident was discovered;

5. a copy of the CNA's statement (signed and dated);

6. a copy of the resident's statement (signed and dated);

7. witness statements (signed and dated); and

8. a copy of the time card for the date and time of the incident.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1900 (November 2016).

### **§9729. Sanctions and Appeal of Sanctions**

A. Any nursing facility found to be in violation of any state or federal statute, regulation or any department rule, adopted in accordance with the Administrative Procedure Act, governing the administration and operation of the nursing facility may be sanctioned as provided for in LAC 48:I.Chapter 46.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1900 (November 2016).

### **§9731. Suspensive Appeal of Revocation of License**

A. The secretary of the Department of Health, or his/her designee, may deny an application for a license or refuse to renew a license or may revoke an outstanding license when an investigation reveals that the applicant or licensee is in nonconformance with or in violation of the provisions of R.S.40:2009.6, provided that in all such cases, the Secretary shall furnish the applicant or licensee 30 calendar days written notice specifying reasons for the action.

B. The secretary or designee, in a written notice of denial, denial of renewal or revocation of a license, shall notify the applicant or licensee of his right to file a suspensive appeal with the DAL within 30 calendar days from the date the notice, as described in this Subchapter. This appeal or request for a hearing shall specify in detail reasons why the appeal is lodged and why the appellant feels aggrieved by the action of the secretary.

C. When any appeal as described in this Subchapter is received by the DAL, the hearing shall be conducted in accordance with R.S. 40:2009.17 and the Administrative Procedure Act.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1901 (November 2016).

### **§9733. Approval of Plans**

A. Plans and specifications for new construction of, or to, a nursing facility, and for any major alterations or renovations to a nursing facility, shall be submitted to the Department of Public Safety, Office of the State Fire Marshal (OSFM) for review in accordance with R.S. 40:1563(L), R.S. 40:1574 and LAC 55:V.Chapter 3.

1. Plans and specifications for new construction, major alterations and major renovations shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer where required by Louisiana

architecture and engineering licensing laws of R.S. 37:141 et seq., and R.S. 37:681 et seq., and respective implementing regulations.

2. No residential conversions shall be considered for a nursing facility license.

B. The plans and specifications shall comply with all of the following:

1. LDH nursing facility licensing requirements and the Office of Public Health's (OPH) nursing home regulations (see LAC 51:XX); and

2. The OSFM's requirements for plan submittals and compliance with all codes required by that office.

C. Notice of satisfactory review from the department and OSFM constitute 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, regulations, ordinances, codes or rules of any responsible agency.

D. Fire Protection. All nursing facilities licensed by the department shall comply with the rules, laws, codes and enforcement policies as promulgated by OSFM.

1. It shall be the primary responsibility of OSFM to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing acceptable written proof from OSFM that such applicant is complying with their provisions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1901 (November 2016).

### **§9735. Sanitation and Patient Safety**

A. All nursing facilities licensed by the department shall comply with the rules, sanitary code and enforcement policies as promulgated by the Office of Public Health (OPH).

1. It shall be the primary responsibility of OPH to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing an approval from OPH that such applicant is complying with their provisions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1901 (November 2016).

### **§9737. Alzheimer's Special Care Disclosure**

A. Any provider offering a special program for persons with Alzheimer's disease or a related disorder shall disclose the form of care or treatment that distinguishes it as being especially applicable to or suitable for such persons. For the

purpose of this section, a related disorder means progressive, incurable dementia.

B. Prior to entering into any agreement to provide care, a provider shall make the disclosure to:

1. any person seeking services within an Alzheimer's special care program; or

2. any person seeking such services on behalf of a person with Alzheimer's disease or a related disorder within an Alzheimer's special care program. A provider shall make the disclosure upon characterizing programs or services as especially suited for persons with Alzheimer's disease or a related disorder. Additionally, a provider shall give copies of current disclosure forms to all designees, representatives or sponsors of persons receiving treatment in an Alzheimer's special care program.

C. A provider shall furnish the disclosure to the department when applying for a license, renewing an existing license, or changing an existing license. Additional disclosure may be made to the state ombudsman. During the licensure or renewal process, the department will examine all disclosures to verify the accuracy of the information. Failure to provide accurate or timely information constitutes noncompliance with this section and may subject the provider to standard administrative penalties or corrective actions. Distributing an inaccurate or misleading disclosure form constitutes deceptive advertising and may subject a provider to prosecution under R.S. 51:1401 et seq. In such instances, the department will refer the matter to the Attorney General's Division of Consumer Protection for investigation and possible prosecution.

D. Within seven working days of a significant change in the information submitted to the department, a provider shall furnish an amended disclosure form reflecting the change to the following parties:

1. the department;
2. any clients with Alzheimer's disease or a related disorder currently residing in the nursing facility;
3. any designee, representative or sponsor of any such client;
4. any person seeking services in an Alzheimer's special care program; and
5. any person seeking services on behalf of a person with Alzheimer's disease or a related disorder in an Alzheimer's special care program.

E. The provider's Alzheimer's special care disclosure documentation shall contain the following information:

1. a written statement of the overall philosophy and mission of the Alzheimer's special care program which reflects the needs of residents afflicted with dementia;
2. a description of the criteria and process for admission to, transfer, or discharge from the program;
3. a description of the process used to perform an assessment as well as to develop and implement the plan of

care, including the responsiveness of the plan of care to changes in condition;

4. a description of staff training and continuing education practices;

5. a description of the physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

6. a description of the frequency and types of resident activities;

7. a statement of philosophy on the family's involvement in care and a statement on the availability of family support programs; and

8. a list of the fees for care and any additional program fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1901 (November 2016).

## **Subchapter B. Organization and General Services**

### **§9751. Delivery of Services**

A. A nursing facility shall be administered in a manner that promotes the highest level of physical, mental and psychosocial functioning and well-being of each resident.

B. A nursing facility shall be in compliance with all required federal, state and local statutes, laws, ordinances, rules, regulations and fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1902 (November 2016).

### **§9753. Governing Body**

A. The nursing facility shall have a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing facility. The governing body shall develop and approve policies and procedures which define and describe the scope of services offered. The policies and procedures shall be revised as necessary and reviewed at least annually.

B. The governing body shall be responsible for the operation of the nursing facility.

C. The governing body shall appoint in writing a licensed administrator responsible for the management of the nursing facility.

D. The governing body of the nursing facility shall appoint a facility designee charged with the general administration of the nursing facility in the absence of a licensed administrator.

E. The governing body shall notify the department in writing when a change occurs in the administrator position

within 30 calendar days from the date the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1902 (November 2016).

### **§9755. Administration**

A. Facility Administrator. Each nursing facility shall have a full time administrator. The administrator shall be licensed by the Louisiana Board of Examiners of Nursing Facility Administrators.

1. The administrator is the person responsible for the onsite, daily implementation and supervision of the nursing facility's overall operation commensurate with the authority conferred by the governing body.

2. The nursing facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

B. A full-time employee functioning in an administrative capacity shall be authorized in writing to act in the administrator's behalf when he/she is absent or functioning as a full-time administrator for two facilities.

#### C. Administrator Responsibilities and Restrictions

1. No individual shall function as a full-time administrator for more than two nursing facilities. When an individual functions as a full-time administrator of two nursing facilities, the department shall consider such factors including but not limited to size and proximity with regard to the administrator's ability to sufficiently manage the affairs of both nursing facilities.

a. The response time to either nursing facility shall be no longer than one hour. The administrator's response to either of the facilities shall include communication, either telephonic or electronic and/or by physical presence at the facility. Any consideration requiring administrator's response shall be reviewed on a case-by-case basis.

b. If an individual functions as an administrator of two nursing facilities, he/she shall spend 20 hours per week at each nursing facility.

2. The administrator, or his designee, is responsible, in writing, for the execution of all policies and procedures.

3. The administrator is responsible for ensuring the nursing facility has a plan to conduct comprehensive risk assessments to determine the potential adverse impact of equipment, supplies and other factors relating to the health, safety and welfare of residents. Results of the risk assessments shall be used to develop and implement procedures to address the potential adverse impact and safety risk in the entire facility including but not limited to locked or specialized care units.

4. Written notice shall be provided to HSS for any personnel change in the administrator position. This notice shall be provided within 30 calendar days from the date of change by the facility administrator or, in the absence of an administrator, by the governing body of the nursing facility at the time the change occurs.

a. Notice shall include the identity of all individuals involved and the specific changes which have occurred.

b. The department shall allow nursing facilities 30 days from the date of the change in the position to fill the resulting vacancy in the administrator position. There shall be no exemption to the administrator position requirement.

c. Failure to either fill a vacancy, or to notify the department in writing within 30 days from the date of the change may result in a class C civil fine.

D. Assistant Administrator. A nursing facility with a licensed bed capacity of 161 or more beds shall employ an assistant administrator. An assistant administrator shall be a full-time employee and function in an administrative capacity.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1902 (November 2016).

### **§9757. Personnel**

A. There shall be sufficient qualified personnel to properly operate the nursing facility to assure the health, safety, proper care and treatment of the residents.

1. Time schedules shall be maintained which indicate the numbers and classification of all personnel, including relief personnel, who works on each tour of duty. The time schedules shall reflect all changes so as to indicate:

- a. staff persons who actually worked;
- b. in what capacity staff worked; and
- c. percentage of time staff persons worked in each of the following capacities:
  - i. housekeeping;
  - ii. laundry;
  - iii. food service;
  - iv. CNA; and
  - v. nurse.

2. If the nursing facility's system of care (such as in the culture change environment) is such that nursing personnel perform services in addition to nursing care, such as housekeeping, laundry and food preparation as part of a plan wherein tasks and routines are organized and carried out to maximally approximate a facility environment, the nursing facility shall ensure:

a. sufficient nursing staff hours for the care of the resident;

b. nursing services shall not be neglected in order to provide the additional non-nursing services; and

c. nurse aides shall be properly trained in food preparation safety and infection control before being allowed to provide this service to residents.

B. Personnel records shall be current and available for each employee and shall contain sufficient information to assure that they are assigned duties consistent with his or her job description and level of competence, education, preparation and experience.

### C. CNA Work History Reporting Requirements

1. If a nursing facility hires certified nursing assistants to provide care and services, the administrator or designee shall complete and submit the appropriate notice to the nurse aide registry to verify employment and termination of that certified nurse aide, within five working days of the action.

2. The administrator or designee shall reconcile with the nurse aide registry, at least monthly, the certified nurse aides employed and those terminated.

3. Accuracy of the work history held by the registry is the responsibility of the nursing facility (owner, administrator or designee).

a. When a change of ownership (CHOW) occurs, the new owner and/or administrator or designee shall ensure that all notifications of employment and termination of certified nurse aides have been sent to the registry, at the point that the change occurs.

b. In the event that a request for verification of work history is received after the CHOW occurs, the new owner and/or administrator or designee shall be responsible for compliance. The notification shall be sent to the registry within five working days of the request.

c. The administrator or designee shall ensure that all notifications of employment and termination of certified nurse aides, employed through staffing agencies, are sent to the registry monthly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1903 (November 2016).

### §9759. Criminal History Provisions and Screening

A. Nursing facilities shall have statewide criminal history checks performed on non-licensed personnel to include CNAs, housekeeping staff, activity workers, social service personnel and any other non-licensed personnel who provide care or other health related services to the residents in accordance with R.S. 40:1300.51 et seq.

B. All personnel requiring licensure to provide care shall be currently licensed to practice in the state of Louisiana. Credentials of all licensed full-time, part-time and consultant personnel shall be verified on an annual basis in writing by a designated staff member.

C. All personnel, including routine unpaid workers, involved in direct resident care, shall adhere to the *Title 51, Public Health—Sanitary Code*, Chapter 5 requirements for health examinations and tuberculosis (TB) testing for employees and volunteers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1903 (November 2016).

### §9761. Policies and Procedures

A. There shall be written policies and procedures:

1. available to staff, residents and legal representatives governing all areas of care and services provided by the nursing facility;

2. ensuring that each resident receives the necessary care and services to promote the highest level of physical, mental and psychosocial functioning and well-being of each resident;

3. developed with the advice of a group of professional personnel consisting of at least a currently licensed physician, the administrator and the director of nursing services;

4. revised as necessary, but reviewed by the professional personnel group referenced in A.3 at least annually;

5. available to admitting physicians;

6. reflecting awareness of, and provision for, meeting the total medical and psychosocial needs of residents, including admission, transfer and discharge planning; and the range of services available to residents, including frequency of physician visits by each category of residents admitted; and

7. approved by the governing body.

B. The nursing facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents and misappropriation of resident property.

1. The nursing facility shall not use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion.

2. The nursing facility shall develop and operationalize policies and procedures for screening and training employees, protection of the residents and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment and misappropriation of property.

C. The administrator or his designee is responsible, in writing, for the execution of such policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.



**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1903 (November 2016).

**§9763. Assessments and Care Plans**

A. An initial assessment of the resident's needs/problems shall be performed and documented in each resident's clinical record by a representative of the appropriate discipline.

B. The assessment, including the PASRR level II recommendations, if applicable, shall be used to develop the resident's plan of care.

C. The assessment shall be completed within 14 days of admission and the care plan shall be completed within 7 days of the completion of the assessment or by the twenty-first day of admission.

D. The care plan shall be revised as necessary and reviewed at least annually by the professionally licensed personnel directly involved in the care of the resident.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1904 (November 2016).

**§9765. Staff Orientation, Training and Education**

A. New employees shall have an orientation program of sufficient scope and duration to inform the individual about his/her responsibilities and how to fulfill them.

B. The orientation program shall include at least a review of policies and procedures, job description and performance expectations prior to the employee performing his/her responsibilities.

C. A staff development program shall be conducted by competent staff and/or consultants and planned based upon employee performance appraisals, resident population served by the nursing facility and as determined by nursing facility staff. All employees shall participate in staff development programs which are planned and conducted for the development and improvement of their skills.

D. Training shall include, at a minimum, problems and needs common to the age, physical, mental and biopsychosocial needs of the residents, and discharge planning of those being served, prevention and control of infections, fire prevention and safety, emergency preparedness, accident prevention, confidentiality of resident information and preservation of resident dignity and respect, including protection of privacy and personal and property rights.

E. The nursing facility's training shall be sufficient to ensure the continuing competence of the staff. Nursing assistants shall be provided a minimum of 12 hours of training per year.

F. Records of training shall be maintained indicating the content, date, time, names of employees in attendance, and the name of the individual(s) who conducted the training.

G. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related practices that include or that are informed by evidence-based care practices.

2. Nursing facility staff who provide care on a regular basis to residents in Alzheimer's special care units shall meet the following training requirements.

a. Staff who provide nursing and nursing assistant care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and five hours of dementia-specific training annually. The training shall include the following topics:

- i. an overview of Alzheimer's disease and related dementias;
- ii. communicating with persons with dementia;
- iii. behavior management for persons with dementia;
- iv. promoting independence in activities of daily living for persons with dementia; and
- v. understanding and dealing with family issues for persons with dementia.

b. Staff who have regular communicative contact with residents, but who do not provide nursing and nursing assistant care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. This training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the nursing facility on interacting with residents with dementia.

3. Nursing facility staff who are not regularly assigned to the Alzheimer's special care unit shall meet the following training requirements:

a. Staff who are not regularly assigned to the Alzheimer's special care unit, but still provide nursing assistant care in the facility shall be required to obtain four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually.

b. Unlicensed staff who are not regularly assigned to the Alzheimer's special care unit and who have regular communicative contact with residents but do not provide nursing assistant care in the facility shall be required to obtain four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. The training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided

by the nursing facility on interacting with residents with dementia.

4. Staff delivering approved training will be considered as having received that portion of the training that they have delivered.

5. Any dementia-specific training received in a nursing or nursing assistant program approved by the Department of Health or the Department of Children and Family Services may be used to fulfill the training hours required pursuant to this Section.

6. Nursing facility providers shall offer an approved complete training curriculum themselves or shall contract with another organization, entity, or individual to provide the training.

7. The dementia-specific training curriculum shall be approved by the department. To obtain training curriculum approval, the organization, entity, or individual shall submit the following information to the department or its designee:

- a. a copy of the curriculum;
- b. the name and qualifications of the training coordinator;
- c. a list of all instructors;
- d. the location of the training; and
- e. whether the training will be web-based.

8. A provider, organization, entity or individual shall submit any content changes to an approved training curriculum to the department, or its designee, for review and approval.

9. If a provider, organization, entity or individual, with an approved curriculum, ceases to provide training, the department shall be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity, or individual shall reapply to the department for approval to resume the program.

10. Disqualification of Training Programs and Sanctions. The department may disqualify a training curriculum offered by a provider, organization, entity, or individual that has demonstrated substantial noncompliance with training requirements, including, but not limited to:

- a. the qualifications of training coordinators; or
- b. training curriculum requirements.

11. Compliance with Training Requirements. The review of compliance with training requirements shall include, at a minimum, a review of:

- a. the existence of an approved training curriculum; and
- b. the provider's adherence to established training requirements.

12. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1904 (November 2016).

### §9767. Emergency Preparedness

A. The nursing facility shall have an emergency preparedness plan which conforms to the format and specifications of the Louisiana Model Nursing Home Emergency Plan and the licensing regulations promulgated herein. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that either have the potential to disrupt and/or actually disrupt the nursing facility's ability to provide care and treatment or threatens the lives or safety of the residents. The nursing facility shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

1. All nursing facilities located in the parishes named in R.S. 40:2009.25(A) shall submit their emergency preparedness information and documentation to the department for review. Upon request, all other nursing facilities shall forward their emergency preparedness information and documentation to the Department of Health (LDH) for review.

2. All nursing facilities' emergency preparedness information and documentation shall, at a minimum, include:

- a. a copy of the nursing facility's emergency preparedness plan;
- b. updates, amendments, modifications or changes to the nursing facility's emergency preparedness plan;
- c. the current census and number of licensed beds; and
- d. the nursing facility location, physical street address with longitude and latitude, and current nursing facility contact information.

3. After reviewing the nursing facility's plan, if the department determines that the plan does not comply with the current minimum licensing requirements or does not promote the health, safety and welfare of the nursing facility's residents, the nursing facility shall, within 10 days of notification, respond with an acceptable plan of correction to amend its emergency preparedness plan.

B. A nursing facility shall enter current nursing facility information into Mstat or into the current LDH emergency preparedness webpage or electronic database for reporting.

1. The following information shall be entered or updated into Mstat or into the current LDH emergency preparedness webpage or electronic database for reporting before the fifteenth of each month:

- a. operational status;
- b. census;

c. emergency contact and destination location information;

d. emergency evacuation transportation needs categorized by the following types:

i. red—high risk patients will need to be transported by advanced life support ambulance due to dependency on mechanical or electrical life sustaining devices or very critical medical condition;

ii. yellow—residents who are not dependent on mechanical or electrical life sustaining devices, but cannot be transported using normal means (buses, vans, cars), may need to be transported by an ambulance. However, in the event of inaccessibility of medical transport, buses, vans or cars may be used as a last resort; or

iii. green—residents who need no specialized transportation may be transported by car, van, bus or wheelchair accessible transportation.

2. A nursing facility shall also enter or update the nursing facility's information upon request, or as described per notification of an emergency declared by the secretary. Emergency events include, but are not limited to hurricanes, floods, fires, chemical or biological hazards, power outages, tornados, tropical storms and severe weather.

3. Effective immediately, upon notification of an emergency declared by the secretary, all nursing facilities shall file an electronic report with Mstat or into the current LDH emergency preparedness webpage or electronic database for reporting.

a. The electronic report shall be filed, as prescribed by the LDH, throughout the duration of the emergency declaration.

b. The electronic report shall include, but is not limited to, the following:

- i. status of operation;
- ii. availability of beds;
- iii. generator status;
- iv. evacuation status;
- v. shelter in place status; and
- vi. other information requested by the department.

NOTE: The electronic report shall not be used to request resources or to report emergency events.

C. The emergency preparedness plan shall be individualized and site specific. All information included in the plan or submitted with the plan shall be current and correct. At a minimum, the nursing facility shall have a written emergency plan that addresses:

1. the procedures and criteria used for determining when the nursing facility will evacuate, including a listing of specific evacuation determinations for those procedures and criteria;

2. the procedures and criteria used for determining when the nursing facility will shelter in place, including a listing of specific sheltering in place determinations for those procedures and criteria;

3. a primary sheltering host site(s) and alternative sheltering host site(s) outside the area of risk;

a. these host sites shall be verified by written agreements or contracts that have been signed and dated by all parties;

b. these agreements or contracts shall be verified in writing annually; and

c. the nursing facility shall accept only that number of residents for which it is licensed unless prior written approval has been secured from the department or if the nursing facility is acting as a host site during a declared emergency;

4. the policies and procedures for mandatory evacuations shall provide that if the state, parish, or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or area in which the nursing facility is located, the nursing facility shall evacuate unless the nursing facility receives a written exemption from the ordering authority prior to the mandated evacuation;

5. the monitoring of emergency alerts or notifications including weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials:

a. this monitoring plan shall identify who will perform the monitoring, what equipment will be used for monitoring, and who should be contacted if needed; and

b. the nursing facility shall have plans for monitoring during normal daily operations, when sheltering in place or during evacuations;

6. the delivery of essential care and services to residents, whether the residents are housed in the nursing facility, at an off-site location, or when additional residents are housed in the nursing facility during an emergency;

7. the provisions for the management of staff, including provisions for sufficient qualified staff as well as for distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

8. an executable plan for coordinating transportation services that are sufficient for the resident census and staff. The vehicles required for evacuating residents to another location that are equipped with temperature controls shall be used when available. The plan shall include the following information:

a. a triage system to identify residents who require specialized transportation and medical needs including the number of residents who need:

i. red—high risk patients will need to be transported by advanced life support ambulance due to

dependency on mechanical or electrical life sustaining devices or very critical medical condition;

ii. yellow—residents who are not dependent on mechanical or electrical life sustaining devices, but cannot be transported using normal means (buses, vans, cars), may need to be transported by an ambulance. However, in the event of inaccessibility of medical transport, buses, vans or cars may be used as a last resort; or

iii. green—residents who need no specialized transportation may be transported by car, van, bus or wheelchair accessible transportation;

b. a written transportation contract(s) for the evacuation of residents and staff to a safe location outside the area of risk that is signed and dated by all parties. Vehicles that are owned by, or are at the disposal of the nursing facility, shall have written usage agreements that are signed, dated and shall include verification of ownership; and

i. the number and type of vehicles;

ii. the capacity of each vehicle;

iii. a statement of whether each vehicle is equipped with temperature controls; and

c. plans to prevent and treat heat related medical illnesses due to the failure of, or the lack of, temperature controls during transport.

NOTE: A copy of a vehicle's title or registration will be sufficient for verification of ownership.

9. the procedures to notify the resident's family or responsible representative of the nursing facility's intent to either shelter in place or evacuate. The nursing facility shall have a designee(s) who is responsible for this notification. If the nursing facility evacuates, notification shall include:

a. the date and approximate time that the nursing facility is evacuating;

b. the place or location to which the nursing facility is evacuating, including the:

i. name;

ii. address; and

iii. telephone number;

c. a telephone number that the family or responsible representative may call for information regarding the nursing facility's evacuation; and

d. notification to the resident's family, legal representative, or designated contact shall be made as far in advance as possible, but at least within 24 hours of the determination to shelter in place or after evacuation when communication is available;

10. the procedures or methods that will be used to directly attach identification to the nursing facility resident. The nursing facility shall designate a staff person to be responsible for this identification procedure. This identification shall remain directly attached to the resident

during all phases of an evacuation and shall include the following minimum information, including but not limited to:

a. current and active diagnosis;

b. medications, including dosage and times administered;

c. allergies;

d. special dietary needs or restrictions; and

e. next of kin, including contact information;

11. the nursing facility shall designate a staff person who is responsible for ensuring that a sufficient supply of the following items accompanies residents on buses or other transportation during all phases of evacuation:

a. water;

b. food;

c. nutritional supplies and supplements;

d. medication(s); and

e. other necessary supplies;

12. the procedures for ensuring that all residents have access to licensed nursing staff and that appropriate nursing services are provided during all phases of the evacuation, including transport of residents:

a. for buses or vehicles transporting 15 or more residents, licensed nursing staff shall accompany the residents on the bus or vehicle;

b. a licensed therapist(s) or paramedic may substitute for licensed nursing staff;

13. staffing patterns for sheltering in place and for evacuation, including contact information for such staff;

14. a plan for sheltering in place if the nursing facility determines that sheltering in place is appropriate:

a. if the nursing facility shelters in place, the nursing facility's plan shall ensure that seven days of necessary supplies are on hand or have written agreements, including timelines, to have supplies delivered prior to the emergency event. Supplies should include, but are not limited to:

i. drinking water or fluids, a minimum of 1 gallon per day per person sheltering at the nursing facility;

ii. water for sanitation;

iii. non-perishable food, including special diets;

iv. medications;

v. medical supplies;

vi. personal hygiene supplies; and

vii. sanitary supplies;

b. if the nursing facility shelters in place, the nursing facility's plan shall provide for a posted

communications plan for contacting emergency services and monitoring emergency broadcasts. The nursing facility shall designate a staff person to be responsible for this function. The communication plan shall include:

- i. the type of equipment to be used;
  - ii. back-up equipment to be used if available;
  - iii. the equipment's testing schedule; and
  - iv. the power supply for the equipment being used;
- c. the nursing facility's plan shall include a statement indicating whether the nursing facility has a generator for sheltering in place. If the nursing facility has such a generator, the plan shall provide for a seven day supply of fuel, either on hand or delivered prior to the emergency event. If the nursing facility has such a generator, the plan shall provide a list of the generator's capabilities including:
- i. its ability to provide cooling or heating for all or designated areas in the nursing facility;
  - ii. the ability to power an OPH approved sewerage system;
  - iii. the ability to power an OPH approved water system;
  - iv. the ability to power medical equipment;
  - v. the ability to power refrigeration;
  - vi. the ability to power lights; and
  - vii. the ability to power communications;
- d. an assessment of the integrity of the nursing facility's building to include, but not be limited to:
- i. wind load or ability to withstand wind;
  - ii. flood zone and flood plain information;
  - iii. power failure;
  - iv. age of building and type of construction; and
  - v. determinations of, and locations of interior safe zones;
- e. plans for preventing and treating heat related medical illnesses due to the failure of or the lack of air conditioning while sheltering in place;
- f. the nursing facility's plan shall include instructions to notify OHSEP and LDH of the nursing facility's plan to shelter in place; and
- g. the nursing facility shall provide to LDH a list of residents sheltering in place;

15. those nursing facilities that are subject to the provisions of R.S. 40:2009.25(A) shall perform a risk assessment to determine the nursing facility's integrity. The integrity of the nursing facility and all relevant and available information shall be used in determining whether sheltering in place is appropriate. All elevations shall be given in reference to sea level or adjacent grade as appropriate. The

assessment shall be reviewed and updated annually. The risk assessment shall include the nursing facility's determinations and the following documentation:

- a. the nursing facility's latitude and longitude;
  - b. flood zone determination for the nursing facility and base flood elevation, if available:
    - i. the nursing facility shall evaluate how these factors will affect the building;
  - c. elevations of the building(s), heating ventilation and air conditioning (HVAC) system(s), generator(s), fuel storage, electrical service, water system and sewer motor, if applicable:
    - i. the nursing facility shall evaluate how these factors will affect the nursing facility considering projected flood and surge water depths;
  - d. an evaluation of the building to determine its ability to withstand wind and flood hazards to include:
    - i. the construction type and age;
    - ii. roof type and wind load;
    - iii. windows, shutters and wind load;
    - iv. wind load of shelter building; and
    - v. location of interior safe zones;
  - e. an evaluation of each generator's fuel source(s), including refueling plans, fuel consumption rate and a statement that the output of the generator(s) will meet the electrical load or demand of the required (or designated) emergency equipment;
  - f. the determinations of an evaluation of surroundings, including lay-down hazards or objects that could fall on the building and hazardous materials, such as:
    - i. trees;
    - ii. towers;
    - iii. storage tanks;
    - iv. other buildings;
    - v. pipe lines;
    - vi. chemical and biological hazards; and
    - vii. fuels;
  - g. sea, lake and overland surge from hurricanes (SLOSH) modeling using the maximum's of the maximum envelope of waters (MOM) for the nursing facility's specific location and the findings for all categories of hurricanes. The nursing facility's plan shall include an evaluation of how this will or will not affect the nursing facility;
16. the nursing facility's plan shall provide for an evaluation of security risks and corresponding security precautions that will be taken for protecting residents, staff and supplies during and after an emergency event;
17. the nursing facility's plan shall include clearly labeled and legible floor plan(s) of the nursing facility's

building(s). The nursing facility's plan shall include the following:

- a. the areas being used as shelter or safe zones;
- b. the supply and emergency supply storage areas;
- c. the emergency power outlets;
- d. the communications center;
- e. the location of the posted emergency plan:
  - i. the posted location shall be easily accessible to staff; and
- f. a pre-designated command post.

#### D. Emergency Plan Activation, Review and Summary

1. The nursing facility's shelter in place plan and evacuation plan shall each be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if a need is indicated by the nursing facility's performance during the emergency event or the planned drill.

2. Nursing facilities subject to the provisions of R.S. 40:2009.25(B) shall submit a summary of the updated plan to the department's nursing facility emergency preparedness manager by March 1 of each year. If changes are made during the year, a summary of the amended plan shall be submitted within 30 days of the modification. All agreements and contracts shall be verified by all parties annually and submitted.

E. The nursing facility's plan shall be submitted to the parish or local OHSEP annually. Any recommendations by the parish or local OHSEP regarding the nursing facility's plan shall be documented and addressed by the nursing facility.

1. For nursing facilities, the following requirements shall be met.

- a. The nursing facility's plan shall include verification of its submission to the parish or local OHSEP.
- b. A copy of any and all response(s) by the nursing facility to the local or parish OHSEP recommendations shall be forwarded to LDH nursing facility emergency preparedness manager.

F. The plan shall be available to representatives of the Office of the State Fire Marshal and the Office of Public Health.

G. The nursing facility's plan shall follow all applicable laws, standards, rules or regulations.

H. Evacuation, Temporary Relocation or Temporary Cessation

1. The following applies to any nursing facility that evacuates, temporarily relocates or temporarily ceases operation at its licensed location due to an emergency.

a. The nursing facility shall immediately give written notice to HSS by hand delivery, facsimile or email of the following information:

- i. the date and approximate time of the evacuation;
- ii. the sheltering host site(s) to which the nursing facility is evacuating; and
- iii. a list of residents being evacuated, which shall indicate the evacuation site for each resident.

b. Within 48 hours, the nursing facility shall notify the HSS of any deviations from the intended sheltering host site(s) and shall provide HSS with a list of all residents and their locations.

c. If there was no damage to the licensed location due to the emergency and there was no power outage of HVAC (either through regular service or generator) of more than 48 hours at the licensed location due to the emergency event, the nursing facility may reopen at its licensed location and shall notify HSS within 24 hours of reopening. The nursing facility shall comply with OPH and OSFM and have clearance from the local office of emergency preparedness.

d. For all other evacuations, temporary relocations, or temporary cessation of operations due to an emergency event, a nursing facility shall submit to Health Standards a written request to reopen, prior to reopening at the licensed location. That request shall include:

- i. damage report;
- ii. extent and duration of any power outages;
- iii. re-entry census;
- iv. staffing availability;
- v. access to emergency or hospital services; and
- vi. availability and/or access to food, water, medications and supplies.

2. Upon receipt of a reopening request, the department shall review and determine if reopening will be approved. The department may request additional information from the nursing facility as necessary to make determinations regarding reopening.

3. After review of all documentation, the department shall issue a notice of one of the following determinations:

- a. approval of reopening without survey;
- b. surveys required before approval to reopen will be granted. This may include surveys by the OPH, OSFM and HSS; or
- c. denial of reopening.

4. The purpose of the surveys referenced above is to assure that the nursing facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

a. The Health Standards Section, in coordination with state and parish OHSEP, will determine the nursing facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services and necessary supplies.

b. The Health Standards Section will give priority to reopening surveys.

5. Upon request by the department, the nursing facility shall submit a written summary attesting how the nursing facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of all injuries and deaths of residents that occurred during execution of the plan, evacuation and temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

I. Sheltering in Place. If a nursing facility shelters in place at its licensed location during an emergency event, the following will apply.

1. Upon request by the department, the nursing facility shall submit a written summary attesting how the nursing facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

J. Unlicensed Sheltering Sites

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location due to an emergency event, the nursing facility shall be allowed to remain at an unlicensed sheltering site for a maximum of five days. A nursing facility may request one extension, not to exceed 15 days, to remain at the unlicensed sheltering site.

a. The request shall be submitted in writing to HSS and shall be based upon information that the nursing facility's residents will return to its licensed location, or be

placed in alternate licensed nursing facility beds within the extension period requested.

b. The extension shall only be granted for good cause shown and for circumstances beyond the control of the nursing facility.

c. This extension shall be granted only if essential care and services to residents are ensured at the current sheltering facility.

2. Upon expiration of the five days or upon expiration of the written extension granted to the nursing facility, all residents shall be relocated to a licensed nursing facility and HSS and OHSEP shall be informed of the residents' new location(s).

K. Inactivation of License due to Declared Disaster or Emergency

1. A licensed nursing facility in an area or areas which have been affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed two years, provided that the following conditions are met:

a. the licensed nursing facility shall submit written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

i. the nursing facility has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

ii. the licensed nursing facility intends to resume operation as a nursing facility in the same service area; and

iii. includes an attestation that the emergency or disaster is the sole causal factor in the interruption of the provision of services;

NOTE: Pursuant to these provisions, an extension of the 60 day deadline may be granted at the discretion of the department.

b. the licensed nursing facility resumes operating as a nursing facility in the same service area within two years of the approval of construction plans by all required agencies upon issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

c. the licensed nursing facility continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

d. the licensed nursing facility continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to inactivate a nursing facility license, the department shall

issue a notice of inactivation of license to the nursing facility.

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a nursing facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the nursing facility shall submit a written license reinstatement request to the licensing agency of the department within two years of the Executive Order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing survey; and

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

4. Upon receiving a completed written request to reinstate a nursing facility license, the department shall conduct a licensing survey. If the nursing facility meets the requirements for licensure and the requirements under this Subsection, the department shall issue a notice of reinstatement of the nursing facility license. The licensed bed capacity of the reinstated license shall not exceed the licensed bed capacity of the nursing facility at the time of the request to inactivate the license.

5. No change of ownership in the nursing facility shall occur until such nursing facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a nursing facility.

6. The provisions of this Subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the nursing facility license.

#### L. Inactivation of License due to Non-Declared Emergency or Disaster

1. A licensed nursing facility in an area or areas which have been affected by a non-declared emergency or disaster may seek to inactivate its license, provided that the following conditions are met:

a. the licensed nursing facility shall submit written notification to the Health Standards Section within 30 days of the date of the non-declared emergency or disaster stating that:

i. the licensed nursing facility has experienced an interruption in the provisions of services as a result of events that are due to a non-declared emergency or disaster;

ii. the licensed nursing facility intends to resume operation as a nursing facility in the same service area;

iii. the licensed nursing facility attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

iv. the licensed nursing facility's initial request to inactivate does not exceed one year for the completion of repairs, renovations, rebuilding or replacement of the facility;

NOTE: Pursuant to these provisions, an extension of the 30 day deadline for initiation of request may be granted at the discretion of the department.

b. the licensed nursing facility continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

c. the licensed nursing facility continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to temporarily inactivate a nursing facility license, the department shall issue a notice of inactivation of license to the nursing facility.

3. Upon facility's receipt of the department's approval of request to inactivate the facility's license, the facility shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the facility to the OSFM and the OPH as required.

4. The licensed nursing facility shall resume operating as a nursing facility in the same service area within one year of the approval of renovation/construction plans by OSFM and OPH as required.

Exception: If the facility requires an extension of this timeframe due to circumstances beyond the facility's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show facility's active efforts to complete construction or repairs and the reasons for request for extension of facility's inactive license. Any approvals for extension are at the sole discretion of the department.

5. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a nursing facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the nursing facility shall submit a written license reinstatement request to the licensing agency of the department;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing or physical environment survey; and

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

6. Upon receiving a completed written request to reinstate a nursing facility license, the department may conduct a licensing or physical environment survey. The



department may issue a notice of reinstatement if the facility has met the requirements for licensure including the requirements of this Subsection.

NOTE: The licensed bed capacity of the reinstated license shall not exceed the licensed bed capacity of the nursing facility at the time of the request to temporarily inactivate the license.

7. No change of ownership in the nursing facility shall occur until such nursing facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a nursing facility.

8. The provisions of this Subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

9. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the nursing facility license.

#### M. Temporary Inactivation of Licensed Nursing Facility Beds Due to Major Alterations

1. A licensed nursing facility which is undergoing major alterations to its physical plant may request a temporary inactivation of a certain number of licensed beds providing that:

a. the nursing facility submits a written request to the licensing agency of the department seeking temporary inactivation of a certain number of its licensed bed capacity. Such written request shall include the following:

i. that the nursing facility has experienced or will experience a temporary interruption in the provisions of services to its licensed bed capacity as a result of major alterations;

ii. an attestation that the renovations are the sole causal factor in the request for temporary inactivation of a certain number of its licensed beds;

iii. the anticipated start date of the temporary inactivation of a certain number of licensed beds;

iv. the anticipated end date of the temporary inactivation of a certain number of licensed beds; and

v. the number of licensed beds requested to be inactivated temporarily;

b. the nursing facility ensures the health, safety and welfare of each resident during the major alterations; and

c. the nursing facility continues to provide, and each resident continues to receive, the necessary care and services to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, in accordance with each resident's comprehensive assessment and plan of care.

2. Upon receiving a completed written request for temporary inactivation of a certain number of the licensed bed capacity of a nursing facility, the department shall issue a notice of temporary inactivation of a certain number of the nursing facility's licensed beds.

3. No change of ownership in the nursing facility shall occur until such nursing facility has completed the major alterations and has resumed operating at prior approved licensed bed capacity.

4. Upon completion of the major alterations and receiving a completed written request to reinstate the number of licensed beds of a nursing facility, the department may conduct a physical environment survey. If the nursing facility meets the requirements for licensure and the requirements under this Subsection, the department may issue a notice of reinstatement of the nursing facility licensed bed capacity.

NOTE: The licensed bed capacity after major alterations are completed shall not exceed the licensed bed capacity of the nursing facility at the time of the request to temporarily inactivate a certain number of its licensed bed capacity prior to renovations.

5. The provisions of this Subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1905 (November 2016).

#### **§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.

B. For purposes of §9769 and §9771, 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 by a resident to be such a clergy member.

C. For purposes of §9769 and §9771, immediate family member shall mean the following of a resident in a nursing facility:

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 resident.

D. For purposes of §9769 and §9771, resident shall mean a resident of a licensed nursing facility in Louisiana or the legal or designated representative of the resident.

E. A licensed nursing facility shall comply with any federal law, regulation, requirement, order, or guideline regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency. The provisions of the licensing rules in §9769.F-I shall be preempted by any federal statute, regulation, requirement, order, or guideline from a federal government agency that requires a nursing facility to restrict resident visitation in a manner that is more restrictive than the rules.

F. Nursing facilities shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in nursing facilities during a declared PHE.

G. Nursing facilities shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in a nursing facility during a declared PHE.

H. The provisions of this Section regarding visitation by members of the clergy shall apply to all nursing facilities licensed by the Department of Health.

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. Each nursing facility 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 resident and his legal or designated representative, upon request. The nursing facility shall provide a link to an electronic copy of the policy and procedure to a member of the clergy, upon request.

2. A nursing facility's policy and procedure regarding clergy visitation may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the nursing facility, 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 resident.

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

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

b. that a clergy member will 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 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 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 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. that a nursing facility's policy and procedure include provisions for compliance with any Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE; and

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.1-2116.

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

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

A. A licensed nursing facility shall comply with any federal law, regulation, requirement, order, or guideline regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency. The provisions of the licensing rules in §9771.B-E shall be preempted by any federal statute, regulation, requirement, order, or guideline from a federal government agency that requires a nursing facility to restrict resident visitation in a manner that is more restrictive than the rules.

B. Nursing facilities shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in nursing facilities during a declared PHE.

C. Nursing facilities shall comply with any executive order or proclamation issued by the governor of the state of

Louisiana regarding visitation in a nursing facility during a declared PHE.

D. The provisions of this Section regarding visitation by immediate family members of the resident and other designated persons shall apply to all nursing facilities licensed by the Department of Health.

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. Each nursing facility 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 resident and his legal or designated representative, upon request. The nursing facility shall provide a link to an electronic copy of the policy and procedure to immediate family members and other designated persons, upon request.

2. A nursing facility'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 nursing facility, 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 resident.

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

a. that the nursing facility 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 will 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 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 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 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. that a nursing facility's policy and procedure include provisions for compliance with any Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

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; and

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.1-2116.

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

## Subchapter C. Resident Rights

### §9775. Transfer and/or Discharge of the Resident

A. Voluntary Individual Transfer or Discharge. The nursing facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing facility to the receiving entity. The information in the transferred and/or discharged resident's care plan, MDS, any mental health and/or psychosocial assessments and/or evaluations and discharge plan shall be submitted to the individual or institution into whose care the resident is being discharged

B. Involuntary Transfer or Discharge. The nursing facility shall permit each resident to remain in the nursing facility, and shall not transfer or discharge the resident from the nursing facility unless:

1. the transfer or discharge is necessary for the resident's welfare and/or the resident's needs cannot be met in the nursing facility;

2. the transfer or discharge is appropriate because the resident's health has improved sufficiently such that the resident no longer needs the services provided by the nursing facility;

3. the safety and health of individuals in the nursing facility is endangered by the resident to be transferred or discharged;

4. the resident has failed, after reasonable and appropriate notice, to pay for services rendered by the nursing facility;

5. the nursing facility ceases to operate.

C. Notice before Involuntary Transfer or Discharge. Before a nursing facility involuntarily transfers or discharges a resident, the nursing facility shall:

1. notify the resident, and if known, a family member or legal representative of the resident, of the transfer or discharge and the reasons for the move in writing and in a language and manner easily understood;

2. record the reasons in the resident's clinical record;

3. timing of the notice. The notice of transfer or discharge shall be made by the nursing facility at least 30 days before the resident is transferred or discharged;

4. notice may be made as soon as practicable before transfer or discharge when:

a. the safety and health of the individuals in the nursing facility would be endangered;

b. the resident's health improves sufficiently to allow a more immediate transfer or discharge;

c. an immediate transfer or discharge is required by the resident's urgent medical needs; or

d. a resident has not resided in the nursing facility for 30 days;

NOTE: In nursing facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to fifteen days for nonpayment of a bill for a stay at the nursing facility.

5. contents of the notice. The written notice to the resident and/or resident's representative (if applicable) of involuntary discharge or transfer shall include the following information:

a. the reason for transfer or discharge;

b. the effective date of transfer or discharge;

c. the location to which the resident is to be transferred or discharged;

d. a statement that the resident has the right to appeal the action to the state. The address, phone number and hours of operation of the Division of Administrative Law or its successor;

e. the name, address and telephone number of the state long term care ombudsman;

f. for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities; and

g. for nursing facility residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act;

6. the nursing facility shall transmit a copy of the involuntary transfer/discharge notice to the local long-term care ombudsman program.

D. Transfer. The nursing facility shall ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his/her legal representative or interested family member, if known and available, shall be consulted in choosing another nursing facility if nursing facility placement is required.

E. Appeal of Involuntary Discharge or Transfer. The resident, or his/her legal representative or designated contact, if known and available, has the right to appeal any transfer or discharge to the Division of Administrative Law, which shall provide a fair hearing in all such appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1911 (November 2016).

### §9777. Statement of Rights and Responsibilities

A. In accordance with R.S. 40:2010.6 et seq., all nursing facilities shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement. The statement shall assure each resident the following:

1. the right to civil and religious liberties, including but not limited to:

a. knowledge of available choices;

b. the right to independent personal decision; and

c. the right to encouragement and assistance from the staff of the nursing facility in the fullest possible exercise of these civil and religious rights;

2. the right to private and uncensored communications, including but not limited to:

a. receiving and sending unopened correspondence;

b. access to a telephone;

c. visitation with any person of the resident's choice; and

d. overnight visitation outside the nursing facility with family and friends in accordance with nursing facility policies, and physician orders without the loss of his bed;

i. nursing facility visiting hours shall be flexible, taking into consideration special circumstances such as out of town visitors and working relatives or friends;

ii. with the consent of the resident and in accordance with the policies approved by the Department of Health, the facility shall permit recognized volunteer groups, representatives of community based legal, social, mental health, and leisure and planning programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident;

3. the right to be granted immediate access to the following:

a. any representative of the secretary of the United States Department of Health and Human Services;

b. any representative of the state acting pursuant to his duties and responsibilities under state or federal law;

c. the resident's individual physician;

d. the state long term care ombudsman;

e. the agency responsible for the protection and the advocacy system for individuals with developmental disabilities;

f. the agency responsible for the protection and the advocacy system for individuals with mental illness;

g. immediate family members, other relatives of the resident, and the resident's clergy subject to the resident's right to deny or withdraw consent at any time;

h. others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time;

i. reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

j. reasonable restrictions imposed by the nursing facility, Department of Public Safety and Corrections, or the court that protect the welfare and safety of all the nursing facility's residents. The nursing facility may change the location of visits to assist care giving or protect the privacy of other residents;

4. the right to present grievances on behalf of himself or others to the nursing facility's staff or administrator, to governmental officials, or to any other person; to recommend changes in policies and services to nursing facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination or reprisal. This right includes access to the resident's sponsor and the Department of Health; and the right to be a member of, to be active in, and to associate with advocacy or special interest groups;

5. the right to be fully informed, in writing and orally, prior to or at time of admission and during his stay, of

services not covered by the basic per diem rates and of bed reservation and refund policies of the facility;

6. the right to be fully informed, in a language that he or she can understand, of his or her total health status, including but not limited to, his or her medical conditions and proposed treatment, to participate in the planning of all medical treatment, including the right to refuse medication and treatment, and to be informed of the consequences of such actions;

7. the right to receive adequate and appropriate health care and protective and support services, including services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules promulgated by LDH;

8. the right to refuse treatment and to refuse to participate in experimental research;

9. the right to formulate an advanced directive and to address life-sustaining procedures, the purpose of which is to assure that all residents have the fundamental right to control the decisions relating to their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances where such persons are diagnosed as having a terminal and irreversible condition. This purpose may be fulfilled by the following, non-exclusive means:

a. an advance directive executed pursuant to the provisions of R.S. 40:1151 et seq., defined as a declaration by a resident which instructs his/her physician to withhold or withdraw life-sustaining procedures or designates another to make the treatment decision and to make such a declaration for him;

b. Louisiana physician order for scope of treatment (LaPOST), executed pursuant to the provisions of R.S. 40:1155.1 et seq., which documents the wishes of a qualified patient in a physician order; or

c. any other means of documenting written instructions or directives, including but not limited to, a living will, durable power of attorney for health care, a medical power of attorney, a pre-existing medical order for do not resuscitate (DNR) or another document that directs the resident's health care choices related to life-sustaining treatments;

NOTE: A resident's choice to document wishes relative to withholding or withdrawal of medical treatment or life-sustaining procedures is voluntary and the provisions herein shall not be construed to compel a resident to do so and shall not be a condition of admission to a nursing facility.

10. the right to have privacy in treatment and in caring for personal needs:

a. to have closed room doors, and to have nursing facility personnel knock before entering the room, except in case of an emergency;

b. to have confidentiality in the treatment of personal and medical records;

c. to be secure in storing and using personal possessions, subject to applicable state and federal health and safety regulations and the rights of other residents; and

d. the right to privacy of the resident's body during, but not limited to toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

11. the right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and oral explanations of the services provided by the facility, including statements and explanations required to be offered on an as needed basis;

12. the right to be free from mental and physical abuse; and the right to be free from any physical or chemical restraint imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms:

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth in writing the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

13. the right of the resident or his or her legal representative:

a. upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

b. after receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing facility;

14. the right to select a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through title XVIII or title XIX of the Social Security Act; and to obtain information about, and to participate in, community based activities and programs, unless such participation would violate infection control or quarantine laws or regulations;

15. the right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents' health and safety. Clothing need not be provided to the resident by the facility except in emergency situations. If provided, it shall be of reasonable fit;

16. the right to have copies of the nursing facility's rules and regulations and an explanation of the resident's responsibility to obey all reasonable rules and regulations of

the nursing facility and of his responsibility to respect the personal rights and private property of other residents;

17. the right to be informed of the bed reservation policy for a hospitalization:

a. the nursing facility shall inform a private pay resident and his sponsor that his bed shall be reserved for any single hospitalization for a period up to 30 days, provided the nursing facility receives reimbursement;

b. notice shall be provided within 24 hours of the hospitalization;

18. the right to receive a prompt response to all reasonable requests and inquiries;

19. the right to refuse to serve as a medical research subject without jeopardizing access to appropriate medical care;

20. the right to use tobacco at his own expense under the facility's safety rules and under applicable laws and rules of the state, unless the nursing facility's written policies preclude smoking in designated areas;

21. the right to consume a reasonable amount of alcoholic beverages at his own expense, unless:

a. not medically advisable as documented in his medical record by the attending physician;

b. alcohol is contraindicated with any of the medications in the resident's current regime; or

c. expressly prohibited by published rules and regulations of a nursing facility owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as a part of its religious belief;

22. the right to retire and rise in accordance with the resident's personal preference; and

23. the right to have any significant change in health status immediately reported to the resident and his/her legal representative or interested family member, if known and available, as soon as such a change is known to the facility's staff.

B. A sponsor may act on a resident's behalf to assure that the nursing facility does not deny the resident's rights under the provisions of R.S. 40:2010.6 et seq., and no right enumerated therein may be waived for any reason whatsoever.

C. Each nursing facility shall provide a copy of the statement required by R.S. 40:2010.8(A) to each resident and sponsor upon or before the resident's admission to the facility and to each staff member of the facility. The statement shall also advise the resident and his sponsor that the nursing facility is not responsible for the actions or inactions of other persons or entities not employed by the nursing facility, such as the resident's treating physician, pharmacists, sitter, or other such persons or entities employed or selected by the resident or his sponsor. Each facility shall prepare a written plan and provide appropriate

staff training to implement the provisions of R.S. 40:2010.6 et seq., including, but not limited to, an explanation of the following:

1. the residents' rights and the staff's responsibilities in the implementation of those rights; and

2. the staff's obligation to provide all residents who have similar needs with comparable services as required by state licensing standards.

D. The nursing facility shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the nursing facility. The nursing facility shall provide such notification prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be acknowledged in writing.

E. The nursing facility shall inform each resident before or at the time of admission, and periodically in the nursing facility and of charges for those services, including any charges for services not covered under Medicare or by the nursing facility's per diem rate.

F. The nursing facility shall notify the resident and the resident's legal representative or sponsor when there is a change in room or roommate assignment. Notification shall be given at least 24 hours before the change and a reason for the move shall be given to all parties. Documentation of this shall be entered in the medical record.

G. Involuntary Admittance. Residents shall not be forced to enter or remain in a nursing facility against their will unless they have been judicially interdicted.

H. Room-to-Room Transfer (Intra-Nursing Facility). The resident or curator and responsible party shall receive at least a 24-hour notice before the room of the resident is changed. A reason for the move will be given to resident and curator/responsible party.

1. Documentation of all of this information will be entered in the medical record.

2. A resident has the right to receive notice when their roommate is changed.

NOTE: The resident has the right to relocate prior to the expiration of the 24 hours' notice if this change is agreeable to the resident.

I. Any violations of the residents' rights set forth in R.S. 40:2010.6 et seq., shall constitute grounds for appropriate action by the Department of Health.

1. Residents shall have a private right of action to enforce these rights, as set forth in R.S. 40:2010.9. The state courts shall have jurisdiction to enjoin a violation of residents' rights and to assess fines for violations not to exceed \$100 per individual violation.

2. In order to determine whether a facility is adequately protecting residents' rights, inspection of the facility by LDH shall include private, informal conversations with a sample of residents to discuss residents' experiences

within the facility with respect to the rights specified in R.S. 40:2010.6 et seq., and with respect to compliance with departmental standards.

J. Any person who submits or reports a complaint concerning a suspected violation of residents' rights or concerning services or conditions in a home or health care facility or who testifies in any administrative or judicial proceedings arising from such complaint shall have immunity from any criminal or civil liability therefore, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justifiable issue of either law or fact raised by the complaining party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1912 (November 2016).

### **§9779. Resident Personal Fund Account**

A. The resident has the right to manage his/her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

B. Upon written authorization of a resident, the facility shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility.

#### **C. Deposit of Funds**

1. Funds in Excess of \$50. The facility shall deposit any residents' personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account.

2. Funds Less Than \$50. The facility shall maintain a resident's personal funds that do not exceed \$50 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

D. Resident Access to Personal Funds Held by Facility. A resident shall have access to facility held funds on an on-going basis and be able to arrange for access to larger funds.

1. Requests for less than \$50 shall be honored within the same day.

2. Requests for \$50 or more shall be honored within three banking days.

E. Accounting and Records. The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

1. The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

2. The individual financial record shall be available through quarterly statements and on request to the resident or his or her legal representative.

F. Conveyance upon Transfer or Discharge. Upon discharge or transfer of a resident from the facility, the provider shall not withhold personal fund account monies in lieu of payment for any outstanding balance owed by a resident unto the provider.

G. Conveyance upon Death of a Resident. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey within 30 days the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

H. Assurance of Financial Security. The facility shall purchase a surety bond, or otherwise provide assurance satisfactory to the secretary, to assure the security of all personal funds of residents deposited with the facility.

#### I. Account Agreement

1. A nursing facility resident, with a personal fund account managed by the nursing facility, may sign an account agreement acknowledging that any funds deposited into the personal fund account by, or on the resident's behalf, are jointly owned by the resident and his legal representative or next of kin. The account agreement shall state that the:

- a. funds in the account shall be jointly owned with the right of survivorship;
- b. funds in the account shall be used by, for, or on behalf of the resident;
- c. resident or the joint owner may deposit funds into the account; and
- d. resident or joint owner may endorse any check, draft or other instrument to the order of any joint owner, for deposit into the account.

2. If a valid account agreement has been executed by the resident, upon the resident's death, the nursing facility shall transfer the funds in the resident's personal fund account to the joint owner within 30 days of the resident's death. This provision only applies to personal fund accounts not in excess of \$2,000.

3. If a valid account agreement has not been executed, or if the personal fund account is in excess of \$2,000, upon the resident's death, the nursing facility shall comply with the federal and state laws and regulations regarding the disbursement of funds in the account and the properties of the deceased.

4. The provisions of this section shall have no effect on federal or state tax obligations or liabilities of the deceased resident's estate. If there are other laws or regulations which conflict with these provisions, those laws or regulations will govern over and supersede the conflicting provisions.

J. Nursing Facility Residents' Burial Insurance Policy. With the resident's permission, the nursing facility administrator or designee may assist the resident in acquiring a burial policy, provided that the administrator,

designee, or affiliated persons derive no financial or other benefit from the resident's acquisition of the policy.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1914 (November 2016).

### §9781. Virtual Visitation

A. Each nursing facility licensed by the Department of Health shall comply with the provisions of the Nursing Home Virtual Visitation Act of 2018 enacted by the Louisiana Legislature, and any such amendments enacted thereafter.

B. The term *monitoring device*, as used in this Section, shall have the same meaning as defined in the Nursing Home Virtual Visitation Act of 2018.

#### C. Capacity to Consent to Virtual Visitation

1. A resident's capacity to consent to the authorization for installation and use of a monitoring device is presumed if the resident has not been interdicted and has no current documented medical diagnosis affecting capacity.

2. Any question as to capacity of a non-interdicted resident to consent to the authorization for installation and use of a monitoring device shall be determined by any one of the following persons in the following order of priority, if there is no person in a prior class who is reasonably available and willing to make such determination:

- a. the resident's personal physician;
- b. the resident's admitting physician; or
- c. the medical director of the nursing facility.

**NOTE:** Such determination shall be documented in the resident's medical record.

3. The nursing facility shall have a policy regarding capacity to consent to the authorization for installation and use of a monitoring device in a resident's room; such policy shall include, at a minimum, the provisions of §9781.C.1 and §9781.C.2; further, the policy shall be in compliance with the provisions of the Nursing Home Visitation Act of 2018 enacted by the Louisiana Legislature, and any such amendments enacted thereafter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.36:254 and 40:1193.1-1193.11.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 46:345 (March 2020).

## Chapter 98. Nursing Facilities

### Subchapter A. Physician Services

#### §9801. Medical Director

A. The nursing facility shall designate, pursuant to a written agreement, a physician currently holding an unrestricted license to practice medicine by the Louisiana State Board of Medical Examiners to serve as medical director.



B. The medical director is responsible for coordinating medical and behavioral health care and assisting to develop, implement and evaluate resident care policies and procedures that reflect current standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1915 (November 2016).

### §9803. Physician Supervision

A. A resident shall be admitted to the nursing facility only with an order from a physician licensed to practice medicine in Louisiana.

1. Each resident shall remain under the care of a physician licensed to practice medicine in Louisiana and shall have freedom of choice in selecting his/her attending physician.

2. The nursing facility shall be responsible for assisting in obtaining an attending physician with the resident's or sponsor's approval when the resident or sponsor is unable to find one.

B. Another physician supervises the medical care of residents when their attending physician is unavailable.

C. Any required physician task may also be satisfied when performed by an advanced practice registered nurse or physician assistant who is not an employee of the nursing facility but who is working under the direction and supervision of a physician and/or in collaboration with a physician.

D. The nursing facility shall provide or arrange for the provision of physician services 24 hours a day, seven days a week, in case of emergency.

E. The name and telephone numbers of the attending physicians and the physicians to be called in case of emergency when the attending physician is not available shall be readily available to nursing personnel. Upon request, the telephone numbers of the attending physician or his/her replacement in case of emergency shall be provided to the resident, resident's representative, if applicable and/or sponsor, guardian, or designated contact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1915 (November 2016).

### §9805. Physician Visits and Responsibilities

#### A. Admissions

1. At the time each resident is admitted, the nursing facility shall have attending physician orders for the resident's immediate care. At a minimum, these orders shall consist of dietary, pharmacy, and routine nursing care to maintain or improve the resident's functional abilities.

2. If the orders are from a physician other than the resident's attending physician, they shall be communicated to the attending physician and verification shall be entered

into the resident's clinical record by the nurse who took the orders.

3. A physical examination shall be performed by the attending physician within 72 hours after admission unless such examination was performed within 30 days prior to admission with the following exceptions:

a. if the physical examination was performed by another physician, the attending physician may attest to its accuracy by countersigning it and placing a copy in the resident's record; or

b. if the resident is transferring from another nursing facility with the same attending physician, a copy of all previous examinations may be obtained from the transferring nursing facility with the attending physician initialing its new date. The clinical history and physical examination, together with diagnoses shall be in the resident's medical record;

c. the physical examination shall include TB testing/screening as required by the current LAC *Title 51, Public Health—Sanitary Code*, Chapter 5 for all persons admitted to nursing facilities.

B. Each resident shall be seen by his/her attending physician at intervals to meet the holistic needs of the resident but at least annually.

C. At each visit, the attending physician shall write, date and sign progress notes.

D. The physician's treatment plan (physician's orders) shall be reviewed by the attending physician at least once annually.

E. Physician telephone/verbal orders shall be received only by physicians, pharmacists, licensed nurses, or licensed therapists, who within the scope of their practice, are allowed to receive physician's orders. These orders shall be reduced to writing in the resident's clinical record and signed and dated by the authorized individual receiving the order. Telephone/verbal orders shall be countersigned by the physician within seven days.

F. Use of signature stamps by physicians is allowed when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative office of the nursing facility shall have on file a signed statement to the effect that the physician is the only one who has the stamp and uses it. There shall be no delegation of signature stamps to another individual.

G. At the option of the nursing facility attending physician, any required physician task in a nursing facility may also be satisfied when performed by an advanced practice registered nurse in collaboration with a physician, or physician assistant who is working under the direction and supervision of an attending physician, pursuant to his/her licensing board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1916 (November 2016).

### §9807. Standing Orders

A. Physician's standing orders are permissible but shall be individualized, taking into consideration such things as drug allergies and the pertinent physical condition of the resident.

B. Utilization of over-the-counter drugs shall be documented on the physician's standing orders.

C. Controlled or prescription drugs shall not be on standing orders, and shall be an individual order reduced to writing on the physician's order sheet as either a routine or pro re nata (PRN) order. Each order shall include the following:

1. name of the medication;
2. strength of the medication;
3. specific dose of the medication (not a dose range);
4. route of administration;
5. reason for administration;
6. time interval between doses for administering the medication;
7. maximum dosage or number of times to be administered in a specific time frame; and
8. when to notify the attending physician if the medication is not effective.

D. Standing orders shall be signed and dated by the attending physician initially and at least annually thereafter.

E. A copy of the standing orders shall be maintained in the resident's active clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1916 (November 2016).

## Subchapter B. Nursing Services

### §9821. General Provisions

A. The nursing facility shall have sufficient nursing staff to provide nursing and related services that meet the needs of each resident. The nursing facility shall assure that each resident receives treatments, medications, diets and other health services as prescribed and planned, all hours of each day.

B. Release of a Body by a Registered Nurse. In the absence of a physician in a setting other than an acute care facility, when an anticipated death has apparently occurred, registered nurses may have the decedent removed to the designated funeral home in accordance with the standing order of a medical director/consultant setting forth basic written criteria for a reasonable determination of death. This is not applicable in cases where the death was unexpected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1916 (November 2016).

### §9823. Nursing Service Personnel

A. The nursing facility shall provide a sufficient number of nursing service personnel consisting of registered nurses, licensed practical nurses, medication attendants certified, and certified nurse aides to provide nursing care to all residents in accordance with resident care plans 24 hours per day.

1. At a minimum, the nursing facility shall provide 2.35 hours of care per patient per day. The director of nursing (DON), the assistant director of nursing (ADON), and nursing department directors may be counted towards the minimum staffing requirements only for the time spent on the shift providing direct and/or hands on resident care services. A maximum of eight ward clerk hours per day can be utilized in the calculation of care hours per resident day.

2. The facility shall post the following information on a daily basis:

- a. the facility name;
- b. the current date;
- c. the resident census; and
- d. the total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift:
  - i. registered nurses;
  - ii. licensed practical nurses; and
  - iii. certified nurse aides.

3. The facility shall post the nurse staffing data specified above on a daily basis at the beginning of each shift. The data shall be posted:

- a. in a clear and readable format; and
- b. in a prominent place readily accessible to residents and visitors.

4. The facility shall, upon oral or written request, make nurse staffing data available to the public for review at a cost not to exceed the community standard.

5. Nursing service personnel shall be assigned duties consistent with their education and experience, and based on the characteristics of the resident census and acuity, and nursing skills required to provide care to the residents.

6. Licensed nurse coverage shall be provided 24 hours per day in the nursing facility. The facility shall develop a policy regarding the nursing services provided by licensed nurses. The policy shall be developed in consideration of the following:

- a. the physical layout of the nursing facility;
- b. the acuity of the residents; and

- c. the resident census.

#### B. Director of Nursing

1. The nursing facility shall designate a registered nurse to serve as the director of nursing services on a full-time basis during the day-tour of duty.

2. The director of nursing services may serve as charge nurse only when the nursing facility has an average daily occupancy of 60 or fewer residents.

3. The director of nursing services shall have responsibilities which include, but are not limited to:

- a. supervising the functions, activities, and training of all nursing personnel;
- b. developing and maintaining standard nursing practice, nursing policy and procedure manuals and written job descriptions for each level of nursing personnel;
- c. coordinating nursing services with other resident services;
- d. designating the charge nurses pursuant to this section;
- e. ensuring that duties of all nursing personnel are clearly defined and assigned in accordance with the level of education, preparation, experience, and licensure; and
- f. supervision of documentation by nursing personnel.

C. If the director of nursing services has non-nursing administrative responsibilities for the nursing facility on a regular basis, there shall be another registered nurse designated to assist in providing direction of care delivery to residents.

D. The director of nursing may serve in such capacity for only one nursing facility.

E. Charge Nurse. A registered nurse, or a qualified licensed practical nurse, shall be designated as charge nurse by the DON for each tour of duty and is responsible for supervision of the total nursing activities in the nursing facility during each tour of duty.

1. The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific residents during each tour of duty on the basis of staff qualifications, size/physical layout of the nursing facility, characteristics of resident census and acuity, and emotional, social, and nursing care needs of the residents.

F. In building complexes or multi story buildings, each building or floor housing residents shall be considered a separate nursing unit and separately staffed, exclusive of the director of nursing.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1917 (November 2016).

### §9825. Nursing Care

A. Each resident shall receive personal attention and nursing care and services in accordance with his/her condition and consistent with current acceptable standards of nursing practice. Each resident shall receive a comprehensive assessment, and a plan of care shall be developed to meet his/her needs. The plan of care shall be developed within 21 days of admission of the resident to the nursing facility and revised as needed to meet the initial and ongoing needs of the resident.

B. Each resident shall be kept clean, dry, well groomed, and dressed appropriately for the time of day and the environment, recognizing the resident's rights and wishes. Proper body and oral hygiene shall be maintained. Skin care shall be provided to each resident as needed to maintain skin integrity and prevent dryness, scaling, irritation, itching and/or pressure sores.

C. Residents unable to carry out activities of daily living shall receive the necessary services to maintain good nutrition, grooming, personal and oral hygiene.

D. Other Nursing Services. Nursing services shall be provided to the resident to ensure that the needs of the resident are met. These services include the following.

1. Drug Administration. Medications shall be administered only by a licensed physician, licensed/applicant nurse, or the resident (with the approval of the interdisciplinary team as documented in the comprehensive care plan).

2. The nursing facility shall be cognizant of the mental status of the resident's roommate(s), or other potential problems which could result in abuses of any drugs used by the residents for self-administration.

3. Medications shall be administered in accordance with the nursing facility's established written procedures and the written policies of the pharmaceutical services committee to ensure the following criteria are met:

a. Drugs to be administered are checked against physician's orders.

b. The resident is identified before administering the drug.

c. All medications/treatments are administered and properly charted in accordance with standards of nursing practice. For any medications/treatments not administered, the reason for each medication/treatment omission shall be recorded in the resident's active medical record.

i. The drug dosage shall be prepared, administered and recorded by the same person.

ii. Medications prescribed for one resident shall not be administered to any other person.

iii. Medication errors and adverse drug reactions shall be immediately reported to the attending physician and recorded in the medical record.

iv. Current medication reference texts or sources shall be kept in all nursing facilities.

E. Restorative nursing care shall be provided for the residents requiring such care.

F. Assistance with eating shall be provided as needed.

G. The nursing facility shall provide the necessary care and services to prevent avoidable pressure ulcers.

H. The nursing facility shall promptly inform the resident, consult with the resident's attending physician, and if known, notify the resident's legal representative, sponsor or designated contact and maintain documentation when there is an accident which results in injury and requires physician intervention, or significant change in the resident's physical, mental or psychosocial status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1917 (November 2016).

## Subchapter C. Dietetic Services

### §9831. General Provisions

A. The nursing facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and dietary needs of each resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1918 (November 2016).

### §9833. Dietary Service Personnel

A. The nursing facility shall employ a licensed dietitian either full-time, part-time or on a consultant basis. A minimum dietary consultation time of not less than eight hours per month shall be required to ensure nutritional needs of residents are addressed timely. There shall be documentation to support that the consultation time was given.

B. If a licensed dietitian is not employed full-time, the nursing facility shall designate a full-time person to serve as the dietary manager.

C. Residents at nutritional risk shall have a complete nutritional assessment conducted by the consulting dietitian.

D. The nursing facility shall employ sufficient competent support personnel to carry out the functions of the dietary services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1918 (November 2016).

### §9835. Menus and Nutritional Adequacy

A. Menus shall be planned, approved, signed and dated by a licensed dietitian prior to use in the nursing facility to

ensure that the menus meet the nutritional needs of the residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council and the National Academy of Sciences, taking into account the cultural background and food habits of residents. Residents' preferences shall be taken into consideration in the development of menus.

1. Menus shall be written for any therapeutic diet ordered.

2. If cycle menus are used, the cycle shall cover a minimum of three weeks and shall be different each day of the week.

3. Each day's menu shall show the actual date served and shall be retained for six months.

4. Menus for the current week shall be available to the residents and posted where food is prepared and served for dietary personnel. Portion sizes shall be reflected either on the menu or within the recipe used to prepare the meal.

B. All diets shall be prescribed by a licensed practitioner. Each resident's diet order shall be documented in the resident's clinical record. There shall be a procedure for the accurate transmittal of dietary orders to the dietary service and for informing the dietary service when the resident does not receive the ordered diet or is unable to consume the diet, with appropriate action taken.

1. The nursing facility shall maintain a current list of residents identified by name, room number and diet order and such identification shall be accessible to staff during meal preparation and service.

2. A current therapeutic diet manual, approved by a registered dietitian, shall be readily available to attending physicians, nursing staff and dietetic service personnel.

C. The nursing facility shall provide to each resident:

1. at least three meals daily, at regular times comparable to normal mealtimes in the community;

2. food prepared by methods that conserve nutritive value, flavor, and appearance;

3. food that is palatable, attractive and at the proper temperature;

4. food prepared in a form designed to meet individual needs; and

5. substitutes offered of similar nutritional value to residents who refuse food or beverages served.

D. A list of all menu substitutions shall be kept for 30 days.

E. There shall be no more than 14 hours between a substantial evening meal and breakfast the following day. A substantial evening meal is defined as an offering of three or more menu items at one time, one of which includes a high-quality protein such as meat, fish, eggs, or cheese.

F. When a nourishing snack is provided at bedtime, there shall be no more than 16 hours between a substantial

evening meal and breakfast the following day if a resident group agrees to this meal span, and a nourishing snack is served.

G. Bedtime nourishments shall be available nightly to all residents.

H. If residents require assistance in eating, food shall be maintained at appropriate serving temperatures until assistance is provided.

I. There shall be a procedure for the accurate documentation, monitoring and reporting of the resident's oral and parenteral intake in the resident's clinical record and incorporation of dietary orders/lab test monitoring into the nutritional plan of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1918 (November 2016).

### §9837. Feeding Assistants

A. Prior to assisting nursing facility residents with feeding, the assistant shall have successfully completed the state-approved training course published by the American Health Care Association, *Assisted Dining: The Role and Skills of Feeding Assistants*.

1. Licensed personnel qualified to teach the course include:

- a. registered nurses;
- b. licensed practical nurses;
- c. dietitians; and
- d. speech therapists.

2. The competency of feeding assistants shall be evaluated by course instructors and supervisory nurses.

3. If feeding assistants transfer between nursing facilities, the receiving nursing facility shall assure competency.

B. Volunteers shall complete the training course except in cases where a family member or significant other is feeding the resident.

C. The clinical decision as to which residents are fed by a feeding assistant shall be made by a registered nurse (RN) or licensed practical nurse (LPN). Such decision shall be based upon the individual nurse's assessment and the resident's latest assessment and plan of care.

1. A physician or speech therapist may override the nurse's decision, if in their professional opinion, it would be contraindicated.

D. The use of a feeding assistant shall be noted on the plan of care.

E. There shall be documentation to show that the residents approved to be fed by feeding assistants have no complicated feeding problems.

1. Feeding assistants may not feed residents who have complicated feeding problems such as difficulty swallowing, recurrent lung aspirations and tube or IV feedings.

F. There shall be documentation of on-going assessment by nursing staff to assure that any complications that develop are identified and addressed promptly.

G. A feeding assistant shall work under the supervision of a licensed RN or LPN and the resident's clinical record shall contain entries made by the supervisory RN or LPN describing services provided by the feeding assistant.

H. Facilities may use feeding assistants at mealtimes or snack times, whenever the nursing facility can provide the necessary supervision.

1. A feeding assistant may feed residents in the dining room or another congregate area.

I. Nursing facilities may use their existing staff to feed residents as long as each non-licensed staff member successfully completes the state-approved training course.

J. Facilities shall maintain a record of all individuals used as feeding assistants who have successfully completed the training course.

K. Residents have the right to refuse to be fed by a feeding assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1919 (November 2016).

### §9839. Equipment and Supplies

A. Special eating equipment and utensils shall be provided for residents who need them. At least a one-week supply of staple food with a three-day supply of perishable food conforming to the approved menu shall be maintained on the premises.

B. An approved lavatory shall be convenient and properly equipped for dietary services staff use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1919 (November 2016).

### §9841. Sanitary Conditions

A. All food shall be procured, stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drinks according to the LAC *Title 51, Public Health—Sanitary Code*.

B. Refrigerator temperatures shall be maintained according to the LAC *Title 51, Public Health—Sanitary Code*.

C. Hot foods shall leave the kitchen or steam table according to the LAC *Title 51, Public Health—Sanitary Code*.

D. In room delivery temperatures shall be maintained according to the LAC *Title 51, Public Health—Sanitary Code*.

E. Food shall be transported to residents' rooms in a manner that protects it from contamination while maintaining required temperatures.

F. Refrigerated food which has been opened from its original package shall be covered, labeled and dated.

G. All food shall be procured from sources that comply with all laws and regulations related to food and food labeling.

H. Food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption.

I. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes:

1. maintaining a water temperature in dishwashing machines at 140 degrees Fahrenheit during the wash cycle (or according to the manufacturer's specifications or instructions) and 180 degrees Fahrenheit for the final rinse;

2. maintaining water temperature in low temperature machines at 120 degrees Fahrenheit (or according to the manufacturer's specification or instructions) with a minimum of 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces; or

3. maintaining a wash water temperature of 75 degrees Fahrenheit, for manual washing in a three-compartment sink, with a minimum of 25 ppm of hypochlorite or equivalent, or a minimum of 12.5 ppm of iodine in the final rinse water; or a hot water immersion at 170 degrees Fahrenheit for at least 30 seconds shall be maintained.

J. Dietary staff shall not store personal items within the food preparation and storage areas.

K. A commercial kitchen in a nursing facility shall not be used for resident dining.

L. Dietary staff shall use good hygienic practices.

M. Dietary employees engaged in the handling, preparation and serving of food shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

N. Staff with communicable diseases or infected skin lesions shall not have contact with food if that contact will transmit the disease.

O. There shall be no use of tobacco products in the dietary department.

P. Toxic items such as insecticides, detergents, polishes and the like shall be properly stored, labeled and used.

Q. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Containers used in food

preparation and utensil washing areas shall be kept covered when meal preparation is completed and when full.

R. All ice intended for human consumption shall be free of visible trash and sediment.

1. Ice used for cooling stored food and food containers shall not be used for human consumption.

2. Ice stored in machines outside the kitchen shall be protected from contamination.

3. Ice scoops shall be stored in a manner so as to protect them from becoming soiled or contaminated between usage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1919 (November 2016).

## Subchapter D. Pharmaceutical Services

### §9851. General Requirements

A. The nursing facility shall provide pharmaceutical services in accordance with accepted professional standards and all appropriate federal, state and local laws and regulations. Only licensed medical personnel shall be allowed to receive and sign for delivery of controlled drugs.

B. The nursing facility is responsible for ensuring the timely availability of drugs and biologicals for its residents.

C. Prescription drugs not covered by Medicaid or Medicare shall be at the expense of the resident. However, attempts should be made to get the attending physician to order a covered medication before the resident incurs any expense.

D. The nursing facility shall provide emergency drugs and biologicals to its residents as necessary and as ordered by a licensed practitioner.

E. The nursing facility shall have an emergency drug kit.

F. The nursing facility shall obtain a permit from the Board of Pharmacy for each emergency drug kit.

G. The most current edition of drug reference materials shall be available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1920 (November 2016).

### §9853. Consultant

A. If the nursing facility does not employ a licensed pharmacist, it shall have a designated consultant pharmacist that provides services in accordance with accepted pharmacy principles and standards. The minimum consultation time shall not be less than one hour per quarter which shall not include drug regimen review activities.

B. There shall be documentation to support that the consultation time was given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1920 (November 2016).

### §9855. Labeling

A. All drug and biological containers shall be properly labeled by a licensed pharmacist following the guidelines established by the state Board of Pharmacy.

B. The label on prepackaged (unit dose) containers shall follow the established guidelines of the state Board of Pharmacy.

C. Over-the-counter (non-prescription) medications and biologicals, may be purchased in bulk packaging and shall be plainly labeled with the medication name and strength and any additional information in accordance with the nursing facility's policies and procedures. Over-the-counter medications specifically purchased for a resident shall be labeled as previously stipulated to include the resident's name. The manufacturer's labeling information shall be present in the absence of prescription labeling.

D. The nursing facility shall develop procedures to assure proper labeling for medications provided a resident for a temporary absence.

#### E. Labeling of Drugs and Biologicals

1. The labeling of drugs and biologicals is based on currently accepted professional principles and includes:

- a. the resident's full name;
- b. physician's name;
- c. full name of pharmacist dispensing;
- d. prescription number;
- e. name and strength of drug;
- f. date of issue and expiration date of all time-dated drugs;
- g. name, address, and telephone number of pharmacy issuing the drug; and
- h. appropriate accessory and cautionary instructions.

2. Non-legend or over-the-counter drugs may be labeled by the nursing facility with resident's full name and room number not to obscure lot number and expiration date.

F. Medication containers which have soiled, damaged, incomplete, illegible or makeshift labels are to be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers which have no labels are to be destroyed in accordance with state and federal laws.

G. The nursing facility shall have a procedure for the proper identification and labeling of medication brought into the nursing facility from an outside source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1920 (November 2016).

### §9857. Storage and Preparation

A. All drugs and biologicals shall be stored in a locked area/cabinet and kept at proper temperatures and lighting. The medicine room or medication preparation area shall have an operable sink with hot and cold water, paper towels and a soap dispenser.

1. In nursing facilities with drugs and biologicals stored in a locked area/cabinet in the resident's room, the lavatory located in the room or immediately adjacent shall be deemed acceptable under this provision.

B. Access to drug storage areas shall be limited to licensed nursing personnel, the licensed nursing facility administrator and the consultant pharmacist as authorized in the nursing facility's policy and procedure manual. Any unlicensed, unauthorized individual (e.g., housekeepers, maintenance personnel, etc.) needing access to drug storage areas shall be under the direct visual supervision of licensed authorized personnel.

1. In nursing facilities with drugs and biologicals stored in a locked area/cabinet in the resident(s) room, residents who have been determined by the interdisciplinary team to be able to safely self-administer drugs shall be allowed to access the drugs.

C. Medication requiring refrigeration shall be kept separate from foods in separate containers within a refrigerator and stored at a temperature range of 36 to 46 degrees Fahrenheit.

1. Laboratory solutions or materials awaiting laboratory pickup shall not be stored in refrigerators with food and/or medication.

2. Medication for "external use only" shall be stored separate from other medication and food.

D. Separately locked, permanently affixed compartments shall be provided for storage of controlled drugs listed in schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

E. Medications of each resident shall be kept and stored in their originally received containers and transferring between containers is forbidden.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1921 (November 2016).

### §9859. Disposition

A. Prescription and over-the-counter (OTC) medications and biologicals are to be disposed of in the following manner:

1. if medication(s) and/or biological(s) are discontinued, or the resident is discharged to the hospital, the

nursing facility will retain the medication(s) for up to 60 days and then be destroyed as described in §9859.C.2. Such medications shall be stored in a locked storage area approved by the DON and consultant pharmacist.

2. If the resident is deceased, the medication will be disposed of as described in §9859.C.2, unless there is a written order of the attending physician specifying otherwise.

3. If the resident is transferred to another facility, the medication will accompany the resident to the receiving facility on the written order of the attending physician.

4. If the resident is discharged to facility, the remaining supply of ordered and filled medication, including controlled drugs, will accompany the resident facility on the written order of the attending physician.

B. If the resident, designated contact and/or legal representative receives the medications or biologicals, upon written order of the physician, documentation containing the name and the amount of the medication or biological to be received shall be completed and signed by the resident, designated contact and/or legal representative their receipt. This document shall be placed in the resident's clinical record.

C. Expired medication shall not be available for resident or staff use. They shall be destroyed on-site by nursing facility personnel no later than 90 days from their expiration/discontinuation date utilizing the following methods.

1. Controlled drugs shall be destroyed on-site by a licensed health care professional, and witnessed by at least one other licensed health care professional or in accordance with DEA provisions.

a. All controlled substances to be destroyed shall be inventoried and documented on a form developed by the nursing facility's staff, with input from the consultant pharmacist and medical director. The form shall include, at a minimum:

- i. the resident's name;
- ii. medication name;
- iii. strength and quantity of the drug destroyed;
- iv. prescription number;
- v. method and date of destruction; and
- vi. signatures of the licensed health care professionals destroying the medication and the name of the licensed health care professional witnessing the destruction for each controlled drug destroyed.

b. This form shall be maintained on the nursing facility's premises for 24 months and archived for a minimum of 36 months. These drugs shall also be listed on the resident's individual accumulative drug destruction record.

2. For non-controlled drugs, there shall be documentation of:

- a. the resident's name;
- b. strength and quantity of the drug destroyed;
- c. prescription number;
- d. method and date of destruction; and
- e. signatures of at least two individuals (which shall be either licensed nurses who are employees of the nursing facility or the consultant pharmacist) witnessing the destruction.

D. Medications of residents transferred to a hospital may be retained until the resident's return. Upon the resident's return, the physician's order shall dictate whether or not the resident is to continue the same drug regimen as previously ordered.

E. Nothing herein, shall preclude a nursing facility from donating unused medications to a provisional pharmacy or to the Department of Corrections or other statutorily approved programs. Medications not donated shall be destroyed using the procedures outlined above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1921 (November 2016).

### §9861. Administration

A. Drugs and biologicals shall not be administered to residents unless ordered by a practitioner duly licensed to prescribe drugs. Such orders shall be in writing and shall include the practitioner's signature. Each order shall include the following:

1. name of the medication;
2. strength of the medication;
3. specific dose of the medication (not a dose range);
4. route of administration;
5. reason for administration;
6. frequency of administration; and
7. maximum dosage or number of times to be administered in a specific time frame when applicable.

B. Drugs and biologicals shall be administered only by medical personnel or licensed nurses authorized to administer drugs and biologicals under their practice act or as allowed by statutorily designated medication attendants certified (MACS).

C. Drugs and biologicals shall be administered as soon as possible after doses are prepared, not to exceed two hours. They shall be administered by the same person who prepared the doses for administration.

D. If the policies and procedures of a licensed only nursing facility allows for the self-administration of drugs, an individual resident may self-administer drugs if an interdisciplinary team has determined that this practice is safe. The team shall also determine who will be responsible



for storage and documentation of the administration of drugs. The resident's care plan shall reflect approval to self-administer medications. If the nursing facility's policy and procedures do not allow self-administration of drugs, this information shall be disclosed prior to admission.

E. All medication errors shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

F. All adverse drug reactions shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

G. Medications not specifically prescribed as to time or number of doses, such as pro re nata (PRN) medications, shall automatically be stopped after a reasonable time that is predetermined by the nursing facility's written policy and procedures. The attending physician shall be notified of an automatic stop order prior to the last dose so that he/she may decide if the administration of the medication is to be continued or altered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1922 (November 2016).

#### **§9863. Drug Regimen Review**

A. The drug regimen of each resident shall be reviewed as often as dictated by the resident's condition. Drug irregularities shall be reported, in writing, to the resident's attending physician and director of nursing, and these reports shall be acted upon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1922 (November 2016).

#### **§9865. Medication Record Keeping**

##### **A. General Records**

1. All medication administered to residents shall be recorded on a medication administration record (MAR). Each medication shall be documented to include:

- a. name, strength and dosage of the medication;
- b. method of administration to include site, if applicable;
- c. time of administration. The time of administration is defined as one hour before to one hour after the ordered time of administration; and
- d. the initials of persons administering the medication along with a legend of the initials.

2. Medication errors and drug reactions shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

##### **B. Controlled Drugs**

1. The nursing facility shall establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate accounting of all controlled drugs received, administered and destroyed or otherwise disposed.

2. Control records of schedule II drugs shall be maintained. The individual resident records shall list each type and strength of drug and the following information:

- a. date;
- b. time administered;
- c. name of resident;
- d. dose;
- e. physician's name;
- f. signature of person administering the dose; and
- g. the balance on hand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1922 (November 2016).

## **Subchapter E. Activity Services**

### **§9871. Activities Program**

A. A nursing facility shall provide for an ongoing program of diverse and meaningful activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident.

B. The activities program shall be designed to allow and encourage each resident's voluntary participation and choice of activities based upon his/her specific needs and interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1923 (November 2016).

### **§9873. Activity Service Personnel**

A. The activities program shall be directed by a resident activities director (RAD). The resident activities director shall be responsible to the administrator or his/her designee for administration and organization of the activities program.

B. Responsibilities of the RAD include the following tasks:

1. scheduling and coordinating group activities and special events inside and outside the nursing facility;
2. developing and using outside resources and actively recruiting volunteers to enhance and broaden the scope of the activities program;
3. posting monthly activity calendars in places of easy viewing by applicants/residents and staff; and
4. planning and implementing individual and group activities designed to meet the applicants/residents' needs and interests.

### C. Activities Assessments

1. Within 14 days after admission, the RAD shall complete a written assessment of each resident's interests and hobbies and note any illnesses or physical handicaps which might affect participation in activities.

2. The activities assessment shall:

- a. become the basis for the activities component of the plan of care;
- b. be signed, dated, and filed with other elements in the medical record;
- c. identify specific problem/need areas along with specific approaches formulated to meet the problems/needs; and
- d. be included in the interdisciplinary staffing.

D. Activity Services Progress Notes. Activity services progress notes shall:

1. be written to document the services provided and/or changes in activity needs or approaches at least every 90 days (quarterly); and
2. document the activity level of residents, specifically describing their day to day activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1923 (November 2016).

## Subchapter F. Social Services

### §9877. Social Services

A. A nursing facility shall provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

B. It is the responsibility of the nursing facility to identify the medically-related social service needs of the resident and assure that the needs are met by the appropriate disciplines.

C. A nursing facility with more than 120 beds shall employ a qualified psychosocial worker on a full-time basis.

1. Qualifications of a Social Worker. A qualified social worker shall have:

- a. a bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to: sociology, special education, rehabilitation counseling, and psychology; and

- b. one year of supervised social work experience in a health care setting working directly with individuals.

D. A nursing facility with 120 beds or less shall designate at least one staff member as social services designee (SSD). The SSD is responsible for assuring that the medically-related social services needs of each resident are identified and met by the appropriate disciplines.

1. The individual responsible for provision of social services shall:

- a. arrange for social services from outside sources or by furnishing the services directly;

- b. integrate social services with other elements of the plan or care; and

- c. complete a social history.

E. Social History. The SSD shall complete, date, and sign a social history on applicants/residents within seven days after their admission. The history shall include but shall not be limited to the following information:

1. background:

- a. age, sex, and marital status;
- b. birthplace;
- c. religion;
- d. cultural and ethnic background;
- e. occupation;
- f. education;
- g. special training or skills; and
- h. primary language; and

2. social functioning:

- a. living situation and address before admission;
- b. names and relationships with family and friends;
- c. involvements with organizations and individuals within the community; and
- d. feelings about admission to the nursing facility.

### F. Social Needs Assessment

1. The SSD shall also identify and document the needs and medically related social/emotional problems within 14 days after admission.

2. The social services assessment shall become a component of the plan of care written in conjunction with other disciplines and shall be filed in the active medical record.

3. If the initial social assessment concludes that there are no problems or unmet social needs, the social assessment shall state that no social services are required.

G. Participation in Interdisciplinary Staffing. The SSD shall participate in the interdisciplinary staffing.

H. Social Services Progress Notes. Social services progress notes shall:

1. be recorded as often as necessary to document services provided, but at least every 90 days (quarterly) in nursing facilities and as often as necessary to describe changes in social conditions;

2. document the degree of involvement of family and friends, interaction with staff and other residents, and adjustment to the nursing facility and roommate(s);

3. reflect the social needs and functioning;

4. document services in the plan of care are actually being provided; and

5. remain in the active medical chart for three to six months.

I. Vision and Hearing. The nursing facility shall assist the resident in:

1. making appointments;

2. arranging for transportation to and from appointments; and

3. locating assistance from community and charitable organizations when payment is not available through Medicaid, Medicare, or private insurance.

J. Dental

1. The nursing facility shall provide or obtain from an outside resource, the following dental services to meet the needs of each resident:

a. routine dental services to the extent covered under the state plan; and

b. emergency dental services.

2. The nursing facility shall, if necessary, assist the resident:

a. in making appointments;

b. in arranging for transportation to and from the dentist's office; and

c. by promptly referring residents with lost or damaged dentures to a dentist.

K. The nursing facility shall establish policies and procedures for ensuring the confidentiality of all social information. Records shall reflect each referral to an outside agency and shall include the applicant/resident's written consent to release the information.

L. The same qualifications apply to Medicare skilled nursing facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1923 (November 2016).

## Subchapter G. Rehabilitation Services

### §9881. Delivery of Services

A. Rehabilitative services, when provided in the nursing facility, shall be delivered in a safe and accessible area. Rehabilitation services shall be provided under the written order of the resident's attending physician. These services shall be provided by appropriately credentialed individuals.

B. Specialized services shall be specified in the resident's plan of care. The nursing facility shall verify that the resident is receiving the specialized services as determined by the level II authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1924 (November 2016).

### §9883. Record Keeping

A. An initial assessment established by the appropriate therapist and a written rehabilitation plan of care shall be developed. The resident's progress shall be recorded by the therapist at the time of each visit. This information shall be maintained in the resident's clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1924 (November 2016).

## Subchapter H. Resident Clinical Records and Financial Information

### §9887. General Provisions

A. The nursing facility shall maintain a clinical record on each resident in accordance with accepted professional standards and practices. Each resident's clinical record shall be complete, accurately documented, readily accessible and systematically organized to facilitate retrieving and compiling information.

B. Each resident's personal financial information shall be protected in compliance with all applicable federal, state and local laws, rules and regulations.

C. Resident records that are created, modified, maintained archived, retrieved or transmitted in an electronic format shall be in compliance with all applicable federal, state and local laws, rules and regulations.

D. Availability of Records. The nursing facility shall make necessary records available to appropriate state and federal personnel at reasonable times. Records shall include but shall not be limited to the following:

1. personal property and financial records;

2. all medical records; and

NOTE: This includes records of all treatments, drugs, and services for which vendor payments have been made, or which are to be made, under the Medical Assistance Program. This includes the authority for and the date of administration of such treatment, drugs, or services. The nursing facility shall provide sufficient documentation to enable LDH to verify that each charge is due and proper prior to payment.

3. all other records which LDH finds necessary to determine a nursing facility's compliance with any federal or state law, rule, or regulation promulgated by the Department of Health and Human Services (DHHS) or by LDH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1924 (November 2016).

#### §9889. Maintenance of Records

A. The overall supervisory responsibility for the resident record service shall be assigned to a responsible employee of the nursing facility.

B. All hand-written or typed entries in the clinical record shall be legible, dated and signed.

C. If electronic signatures are used, the nursing facility shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of any computer generated signature.

D. If a facsimile communications system (fax) is used, the nursing facility shall take precautions when thermal paper is used to ensure that a legible copy is retained as long as the clinical record is retained.

E. A nursing facility 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.

F. No magnetic, electronic, optical or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

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

H. Upon an oral or written request, the nursing facility shall give the resident or his/her legal representative access to all records pertaining to himself/herself including current clinical records within 24 hours excluding weekends and holidays. After receipt of his/her records for inspection, the nursing facility shall provide upon request and two working days' notice, at a cost consistent with the provisions of R.S. 40:1299(A)(2)(b), photocopies of the records or any portions thereof.

I. The nursing facility shall ensure that all clinical records are completed within 90 days of discharge, transfer or death. All information pertaining to a resident's stay shall be centralized in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1924 (November 2016).

#### §9891. Content

A. The clinical record shall contain sufficient information to identify the resident clearly, to justify the diagnosis and treatment, and to document the results accurately.

B. At a minimum, each clinical record shall contain:

1. sufficient information to identify the resident;

2. physician orders;
  3. progress notes by all practitioners and professional personnel providing services to the resident;
  4. a record of the resident's assessments;
  5. the plan of care;
  6. entries describing treatments and services provided;
- and
7. reports of all diagnostic tests and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1925 (November 2016).

#### §9893. Confidentiality

A. The nursing facility shall safeguard clinical record information against loss, destruction or unauthorized use. The nursing facility shall ensure the confidentiality of resident records, including information in a computerized record system, except when release is required by transfer to another health care institution, law, third party payment contract or the resident. Information from, or copies of, records may be released only to authorized individuals, and the nursing facility shall ensure that unauthorized individuals cannot gain access to or alter resident records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1925 (November 2016).

#### §9895. Retention

A. Clinical records shall be retained for a minimum of five years following a resident's discharge or death, unless the records are pertinent to a case in litigation. In such instance, they shall be retained indefinitely or until the litigation is resolved.

B. A nursing facility which is closing shall notify the department of their plan for the disposition of residents' clinical records in writing at least 14 days prior to cessation of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1925 (November 2016).

## Chapter 99. Nursing Facilities

### Subchapter A. Ancillary Services

#### §9901. Radiology and other Diagnostic Services

A. The nursing facility shall arrange for the provision of radiology and other diagnostic services to meet the needs of its residents. The nursing facility is responsible for the quality and timeliness of the services and shall:

1. arrange for the provisions of radiology and other diagnostic services only when ordered by the attending physician;

2. promptly notify the attending physician of the findings;

3. assist resident in making transportation arrangements to and from the source of service as needed;

4. file in the resident's clinical record signed and dated reports of X-ray and other diagnostic services.

B. If the nursing facility provides its own diagnostic services, the services shall meet the applicable conditions of participation of hospitals contained in 42 CFR 482.26.

C. If the nursing facility does not provide diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that is approved to provide these services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1925 (November 2016).

**§9903. Laboratory Services**

A. The nursing facility shall arrange for the provision of clinical laboratory services to meet the needs of the residents. The nursing facility is responsible for the quality and timeliness of the services and shall:

1. provide or obtain laboratory services only when ordered by the attending physicians;

2. promptly notify the attending physician of the findings; and

3. assist resident in making transportation arrangements to and from the services as needed.

B. A nursing facility performing any laboratory service or test shall have appealed to CMS or received a certificate of waiver or a certificate of registration.

C. An application for a certificate of waiver may be needed if the nursing facility performs only the following tasks on the waiver list:

1. dipstick or table reagent urinalysis;
2. fecal occult blood;
3. erythrocyte sedimentation rate;
4. hemoglobin;
5. blood glucose by glucose monitoring
6. devices cleared by Food and Drug Administration (FDA) specifically for home use;
7. spun micro hematocrit;
8. ovulation test; and
9. pregnancy test.

D. Appropriate staff shall file in the residents' clinical record signed and dated reports of clinical laboratory services.

E. If the nursing facility provides its own laboratory services, the services shall meet the applicable conditions for coverage of services furnished by independent laboratories.

F. If the nursing facility provides blood bank and transfusion services it shall meet the applicable conditions for independent laboratories and hospital laboratories and hospital laboratories at 42 CFR 482.27.

G. If the nursing facility laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be approved for participation in the Medicare Program either as a hospital or an independent laboratory.

H. If the nursing facility does not provide laboratory services on site, it shall have an agreement to obtain these services from a laboratory that is approved for participation in the Medicare Program either as a hospital or as an independent laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1925 (November 2016).

**Subchapter B. Physical Environment**

**§9911. General Provisions**

A. The nursing facility shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

B. The nursing facility shall provide a safe, clean, orderly, homelike environment.

C. If the nursing facility determines that a licensing provision of this Subchapter B prohibits the provision of a culture change environment, the nursing facility may submit a written waiver request to the Health Standards Section (HSS) of the Department of Health (LDH), asking that the provision be waived and providing an alternative to the licensing provision of this subchapter. The department shall consider such written waiver request, shall consider the health and safety concerns of such request and the proposed alternative, and shall submit a written response to the nursing facility within 60 days of receipt of such waiver request.

D. Any construction-related waiver or variance request of any provision of the *LAC Title 51, Public Health—Sanitary Code* shall be submitted in writing to the state health officer for his/her consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1926 (November 2016).

**§9913. Nurse/Care Team Work Areas**

A. Each floor and/or household of a nursing facility shall have a nurse/care team work area in locations that are suitable to perform necessary functions. These nurse/care team work areas may be in centralized or decentralized locations, as long as the locations are suitable to perform necessary functions.

1. Each centralized nurse/care team area shall be equipped with working space and accommodations for recording and charting purposes by nursing facility staff with secured storage space for in-house resident records.

a. Exception. Accommodations for recording and charting are not required at the central work area where decentralized work areas are provided.

2. Each decentralized work area, where provided, shall contain working space and accommodations for recording and charting purposes with storage space for administrative activities and in-house resident records.

3. The nurse/care team work areas shall be equipped to receive resident calls through a communication system from resident rooms, toileting and bathing facilities.

a. In the case of an existing centralized nurse/care team work area, this communication may be through audible or visible signals and may include wireless systems.

b. In those facilities that have moved to decentralized nurse/care team work areas, the facility may utilize other electronic systems that provide direct communication from the resident to the staff.

B. There shall be a medicine preparation room or area. Such room or area shall contain a work counter, preparation sink, refrigerator, task lighting and lockable storage for controlled drugs.

C. There shall be a clean utility room on each floor designed for proper storage of nursing equipment and supplies. Such room shall contain task lighting and storage for clean and sterile supplies.

D. There shall be a separate soiled utility room designed for proper cleansing, disinfecting and sterilizing of equipment and supplies. At a minimum, it shall contain a clinical sink or equivalent flushing-rim sink with a rinsing hose or bed pan sanitizer, hand washing facilities, soiled linen receptacles and waste receptacle. Each floor of a nursing facility shall have a soiled utility room.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1926 (November 2016).

**§9915. Resident Rooms**

A. Resident bedrooms shall be designed and equipped for adequate nursing care, comfort, and privacy of residents. Each resident bedroom shall have a floor, walls, and ceilings in good repair and so finished as to enable satisfactory cleaning.

B. Each resident's bedroom shall have a floor at or above grade level, shall accommodate a maximum of two residents, and be so situated that passage through another resident's bedroom is unnecessary.

1. Exception. Resident bedrooms in existing nursing facilities shall be permitted to accommodate no more than four residents unless the cost of renovations to the existing nursing facility exceeds the values stipulated by R.S. 40:1574.

C. Private resident bedrooms shall measure at least 121 square feet of bedroom area, exclusive of wardrobes, closet space, vestibules or toilet rooms, and shall have a clear width of not less than 11 feet.

D. Double occupancy resident bedrooms containing two beds shall measure at least 198 square feet of bedroom area, exclusive of wardrobes, closet space, vestibules or toilet rooms, and shall have a clear width of not less than 11 feet.

E. In existing nursing facilities, or portions thereof, where plans were approved by the department and the Office of the State Fire Marshal prior to January 20, 1998, there shall be at least three feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery.

F. Each resident's bedroom shall have at least one window to the outside atmosphere with a maximum sill height of 36 inches. Windows with sills less than 30 inches from the floor shall be provided with guard rails.

1. Each resident's bedroom window shall be provided with shades, curtains, drapes, or blinds.

2. Operable windows shall be provided with screens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1926 (November 2016).

**§9917. Resident Room Furnishings**

A. Each resident shall be provided with an individual bed of proper size and height for the convenience of the resident and equipped with:

1. a clean supportive frame in good repair;

2. a clean, comfortable, well-constructed mattress at least 5 inches thick with waterproof ticking and correct size to fit the bed;

3. a clean, comfortable pillow shall be provided for each bed with extra pillows available to meet the needs of the residents;

4. adequate bed rails, when necessary, to meet the needs of the resident; and

5. sheets and covers appropriate to the weather and climate.

B. Screens or noncombustible ceiling-suspended privacy curtains which extend around the bed shall be provided for each bed in multi-resident bedrooms to assure resident privacy. Total visual privacy without obstructing the passage of other residents either to the corridor, closet, lavatory or adjacent toilet room, nor fully encapsulating the bedroom window shall be provided.

C. Each resident shall be provided with a call device located within reach of the resident.

D. Each resident shall be provided a bedside table with at least two drawers. As appropriate to resident needs, each resident shall have a comfortable chair with armrests, waste receptacle, and access to mirror unless medically contraindicated.

1. Each resident who has tray service to his/her room shall be provided with an adjustable overbed table positioned so that the resident can eat comfortably.

E. Each resident shall be provided an individual closet that has minimum dimensions of 1 foot 10 inches in depth by 2 feet 6 inches in width. A clothes rod and shelf shall be provided that is either adjustable or installed at heights accessible to the resident. Accommodations shall be made for storage of full-length garments. The shelf may be omitted if the closet provides at least two drawers. The following exceptions may apply.

1. Individual wardrobe units having nominal dimensions of 1 foot 10 inches in depth by 2 feet 6 inches in width are permitted. A clothes rod and shelf shall be provided that is either adjustable or installed at heights accessible to the resident. Accommodations shall be made for storage of full-length garments. The shelf may be omitted if the unit provides at least two drawers.

2. In existing nursing facilities, or portions thereof, where plans were approved by the department and OSFM prior to January 20, 1998, each resident shall be provided an individual wardrobe or closet that has nominal dimensions of 1 foot 10 inches in depth by 2 feet in width.

F. Each resident shall be provided with a bedside light or over-the-bed light capable of being operated from the bed.

1. In nursing facilities, or portions thereof, where plans were approved by the department and OSFM prior to May 1, 1997 shall be exempt from this provision.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1927 (November 2016).

### **§9919. Specialized Care Units, Restraints, and Seclusion**

#### **A. Specialized Care Units**

1. Nursing facilities may establish a distinct unit that benefits residents living with severe dementia, Alzheimer's disease, or other disease process or condition which severely impairs their ability to recognize potential hazards. Such

units shall not be established for the sole purpose of housing individuals with mental illness.

2. Specialized care units may involve locking mechanisms provided that such locking arrangements are approved by OSFM and satisfy the requirements established by OSFM.

3. Nursing facilities providing care and services on a specialized care unit shall develop admission and discharge criteria. There shall be documentation in the resident's record to indicate the unit is the least restrictive environment possible, and placement in the unit provides a clear benefit to the resident.

4. Guidelines for admission and discharge shall be provided to the resident, the resident's family, and/or the resident's legal representative.

5. Specialized care units shall be designed and staffed to provide the care and services necessary for the resident's needs to be met.

a. The unit shall have designated space for dining and/or group and individual activities that is separate and apart from the resident bedrooms and bathrooms.

b. The dining space shall contain tables for eating within the unit.

c. The activities area(s) shall contain seating, and be accessible to the residents within the unit.

6. There shall be sufficient staff to respond to emergency situations in the unit at all times.

7. The facility shall ensure that admission to the specialized care unit imposes restrictions on residents' exercise of their rights only to the extent absolutely necessary to protect the health and safety of themselves and other residents.

8. Care plans shall address the reasons for the resident being in the unit and how the nursing facility is meeting the resident's continuing needs.

9. All staff designated to provide care and services on specialized care units shall have training regarding unit policies and procedures, admission and discharge criteria, emergency situations and the individual and special needs of the residents on the unit.

10. Admission to a specialized care unit shall be in compliance with R.S. 40:1299.53 and 40:2010.8.

B. Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

C. Seclusion. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1927 (November 2016).

**§9921. Hand-Washing Stations, Toilet Rooms and Bathing Facilities**

A. A hand-washing station shall be provided in each resident room.

1. Omission of this station shall be permitted in a single-bed or two-bed room when a hand-washing station is located in an adjoining toilet room that serves that room only.

B. Each resident shall have access to a toilet room without having to enter the corridor area. In nursing facilities built prior to August 26, 1958, each floor occupied by residents shall be provided with a toilet room and hand-washing station.

1. One toilet room shall serve no more than two residents in new construction or no more than two resident rooms in renovation projects. In nursing facilities built prior to August 26, 1958, toilets and hand-washing stations shall each be provided at a rate of 1 per 10 beds or fraction thereof.

2. Toilet rooms shall be easily accessible, conveniently located, well lighted, and ventilated to the outside atmosphere. Fixtures shall be of substantial construction, in good repair and of such design to enable satisfactory cleaning.

3. Separate male and female toilet rooms for use by staff and guests shall be provided.

4. Each toilet room shall contain a toilet, hand-washing station and mirror.

5. Doors to single-use resident toilet rooms shall swing out of the room.

6. Doors to single-use resident toilet rooms shall be permitted to utilize privacy locks that include provisions for emergency access.

7. In multi-use toilet rooms provisions shall be made for resident privacy.

C. Each floor occupied by residents shall be provided with a bathing facility equipped with a toilet, hand-washing station, and bathing unit consisting of a bathtub, shower, or whirlpool unit.

1. A minimum of one bathtub, shower, or whirlpool unit shall be provided for every 20 residents, or fraction thereof, not otherwise served by bathing facilities in resident rooms. In nursing facilities built prior to August 26, 1958, showers or tubs shall each be provided at a rate of 1 per 15 beds or fraction thereof.

2. Bathing facilities shall be easily accessible, conveniently located, well lighted and ventilated to the outside atmosphere. Fixtures shall be of substantial construction, in good repair, and of such design to enable satisfactory cleaning.

3. Tub and shower bottoms shall be of nonslip material. Grab bars shall be provided to prevent falling and to assist in maneuvering in and out of the tub or shower.

4. Separate bathing facilities shall be provided for employees who live on the premises.

5. In multi-use bathing facilities provisions shall be made for resident privacy.

6. Wall switches for controlling lighting, ventilation, heating or any other electrical device shall be so located that they cannot be reached from a bathtub, shower, or whirlpool.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1928 (November 2016).

**§9923. Dining and Resident Activities**

A. The nursing facility shall provide one or more areas designated for resident dining and activities.

B. Smoking is not permitted in the dining room and other public areas as specified by R.S. 40:1300.256(B)(11).

C. Dining room(s) or dining area(s) shall be sufficient in space and function to accommodate the needs of the residents without restriction. Dining areas shall be adequately furnished, well lighted, and well ventilated. Dining areas shall be sufficient in space to comfortably accommodate the persons who usually occupy that space, including persons who utilize walkers, wheelchairs and other ambulating aids or devices.

D. There shall be at least one well lighted and ventilated living/community room with sufficient furniture.

E. There shall be sufficient space and equipment to comfortably accommodate the residents who participate in group and individual activities. These areas shall be well lighted and ventilated and be adequately furnished to accommodate all activities.

F. Areas used for corridor traffic or for storage of equipment shall not be considered as areas for dining or activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1928 (November 2016).

**§9925. Linen and Laundry**

A. The nursing facility shall have available, at all times, a quantity of bed and bath linen essential for proper care and comfort of residents.

B. All linen shall be in good condition.

C. All used linen shall be bagged or enclosed in appropriate containers for transportation to the laundry.

D. Soiled linen storage areas shall be ventilated to the outside atmosphere.



E. Linen from residents with a communicable disease shall be bagged, in readily identifiable containers distinguishable from other laundry, at the location where it was used.

F. Linen soiled with blood or body fluids shall be placed and transported in bags that prevent leakage.

G. If hot water is used, linen shall be washed with detergent in water at least 160 degrees Fahrenheit for 25 minutes. If low-temperature (less than or equal to 158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing, at proper use concentration, shall be used.

H. Clean linen shall be transported and stored in a manner to prevent its contamination.

I. Nursing facilities providing in-house laundry services shall have a laundry system designed to eliminate crossing of soiled and clean linen.

J. Nursing facilities that provide in house laundry services and/or household washers and dryers shall have policies and procedures to ensure safety standards, infection control standards and manufacturer's guidelines are met.

K. There shall be hand washing facilities available for use in any designated laundry area.

L. Provisions shall be made for laundering personal clothing of residents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1929 (November 2016).

#### **§9927. Equipment and Supplies**

A. The nursing facility shall maintain all essential mechanical, electrical, and resident care equipment in safe operating condition.

B. Therapeutic, diagnostic, and other resident care equipment shall be maintained and serviced in accordance with the manufacturer's recommendations.

C. Wheelchairs shall be available for emergency use by residents who are not fully ambulatory.

D. Equipment for taking vital signs shall be maintained.

E. At least one oxygen tank or resource of oxygen shall be readily accessible for emergency use.

F. An adequate number of battery-generated lamps or flash lights shall be available for staff use in case of electrical power failure.

G. There shall be at least one telephone adapted for use by residents with hearing impairments at a height accessible to bound residents who use wheelchairs and be available for resident use where calls can be made without being overheard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1929 (November 2016).

#### **§9929. Other Environmental Conditions**

A. A hard surfaced off-the-road parking area to provide parking for one car per five licensed beds shall be provided. This is a minimum requirement and may be exceeded by local ordinances. Where this requirement would impose an unreasonable hardship, a written request for a lesser amount may be submitted to the department for waiver consideration.

B. The nursing facility shall make arrangements for an adequate supply of safe potable water even when there is a loss of normal water supply. Service from a public water supply shall be used, if available. Private water supplies, if used, shall meet the requirements of the LAC *Title 51, Public Health—Sanitary Code*.

C. An adequate supply of hot water shall be provided which shall be adequate for general cleaning, washing, and sterilizing of cooking and food service dishes and other utensils, and for bathing and laundry use. Hot water supply to the hand washing and bathing faucets in the resident areas shall have automatic control to assure a temperature of not less than 100 degrees Fahrenheit, nor more than 120 degrees Fahrenheit, at the faucet outlet. Supply system design shall comply with the Louisiana state Plumbing Code and shall be based on accepted engineering procedures using actual number and types of fixtures to be installed.

D. The nursing facility shall be connected to the public sewerage system, if such a system is available. Where a public sewerage is not available, the sewerage disposal system shall conform to the requirements of the LAC *Title 51, Public Health—Sanitary Code*.

E. The nursing facility shall maintain a comfortable sound level conducive to meeting the need of the residents.

F. All plumbing shall be properly maintained and conform to the requirements of the LAC *Title 51, Public Health—Sanitary Code*.

G. All openings to the outside atmosphere shall be effectively screened. Exterior doors equipped with closers in air conditioned buildings need not have screens.

H. Each room used by residents shall be capable of being heated to not less than 71 degrees Fahrenheit in the coldest weather and capable of being cooled to not more than 81 degrees Fahrenheit in the warmest weather.

I. Lighting levels in all areas shall be adequate to support task performance by staff personnel and independent functioning of residents. A minimum of 6 foot to 10 foot candelas over the entire stairway, corridors, and resident rooms measured at an elevation of 30 inches above the floor and a minimum of 20 foot to 30 foot candelas over areas used for reading or close work shall be available.

J. Corridors used by residents shall be equipped on each side with firmly secured handrails, affixed to the wall.

Handrails shall comply with the requirements of the state adopted accessibility guidelines.

K. There shall be an effective pest control program so that the nursing facility is free of pest and rodent infestation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1929 (November 2016).

## Subchapter C. Infection Control and Sanitation

### §9941. Organization

A. A nursing facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

B. No later than September 1 of each year, the nursing facility shall provide information from the LDH website to the residents on the risks associated with pneumonia and the availability of the pneumococcal immunization.

C. No later than September 1 of each year, the nursing facility shall provide information from the LDH website to the residents on the risks associated with zoster, also known as shingles, and how to protect oneself against the varicella-zoster virus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016).

### §9943. Infection Control Program

A. An infection control committee shall be established consisting of the medical director and representatives from at least administration, nursing, dietary and housekeeping personnel.

B. The committee shall establish policies and procedures for investigating, controlling and preventing infections in the nursing facility, and monitor staff performance to ensure proper execution of policies and procedures.

C. The committee shall approve and implement written policies and procedures for the collection, storage, handling, and disposal of medical waste.

D. The committee shall meet at least quarterly, documenting the content of its meetings.

E. Reportable diseases as expressed in the LAC Title 51, Public Health—Sanitary Code shall be reported to the local parish health unit of OPH and other agencies as required by state and/or federal laws, statutes, and ordinances.

F. Coronavirus Disease 2019 (COVID-19) Reporting. The facility, in addition to any state and/or local reporting, shall:

1. electronically report information about COVID-19 in the standardized format, and at the frequency, required by the Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC); and

2. inform residents, their representatives, and families of those residing in facilities, of the conditions of residents in the facility, within the timeframe and requirements as specified by CMS regulations and CDC reporting guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016), amended LR 46:1393 (October 2020).

### §9945. Employee Health Policies and Procedures

A. Nursing facility employees with a communicable disease or infected skin lesions shall be prohibited from direct contact with residents or their food, if direct contact will transmit the disease.

B. The nursing facility shall require staff to wash their hands after each direct resident contact for which hand washing is indicated. An antimicrobial gel or waterless cleaner may be used between resident contact, when appropriate. The nursing facility shall follow the current Centers for Disease Control's *Guideline for Hand Washing*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016).

### §9947. Isolation

A. When the infection control program determines that a resident needs isolation to prevent the spread of infection, the nursing facility shall isolate the resident according to the most current Centers for Disease Control's recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016).

### §9949. Housekeeping and Maintenance

A. Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and safe interior shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016).

### §9951. Nursing Care Equipment

A. Bedpans, urinals, emesis basins, wash basins and other personal nursing items shall be thoroughly cleaned after each use and sanitized as necessary. Water pitchers shall be sanitized as necessary.

B. All catheters, irrigation sets, drainage tubes or other supplies or equipment for internal use, and as identified by the manufacturer as one time use only, shall be disposed of in accordance with the manufacture's recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016).

### **§9953. Waste and Hazardous Materials Management**

A. The nursing facility shall have a written and implemented waste management program that identifies and controls wastes and hazardous materials. The program shall comply with all applicable laws and regulations governing wastes and hazardous materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1930 (November 2016).

## **Chapter 100. Nurse Aide Training and Competency Evaluation Program**

### **Subchapter A. General Provisions**

#### **§10001. Definitions**

*Abuse*—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
  - a. sexual abuse;
  - b. exploitation; or
  - c. extortion of funds or other things of value to such an extent that the resident's health, moral or emotional well-being is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

*Approved Setting*—a provider entity licensed and regulated by the department, a school serving children with special needs, or a correctional facility in which the certified nurse aide performs nursing or nursing-related duties.

*Certified Nurse Aide*—an individual who 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 has been determined competent as provided in 42 CFR 483.150(a) and (b), and is listed as

certified and in good standing on Louisiana's nurse aide registry.

*Department*—the Louisiana Department of Health and Hospitals.

*Misappropriation*—taking possession without the permission of the resident who owns the personal belongings, or the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

*Neglect*—the failure to provide goods and services to the resident that are necessary to avoid physical harm, mental anguish or mental illness.

*Nursing Homes or Nursing Facilities*—any entity or facility serving two or more persons, who are not related to the operator by blood or marriage, that undertakes to provide maintenance, personal care or nursing for persons who are unable to properly care for themselves by reason of illness, age or physical infirmity.

*Trainee*—an individual who is at least 16 years old and is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

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).

### **Subchapter B. Training and Competency Requirements**

#### **§10011. General Provisions**

A. All nurse aide training and competency evaluation programs shall be approved by the department.

B. Training and competency evaluation programs may be provided by:

1. community colleges;
2. vocational-technical programs; and
3. other educational entities.

C. Nursing facilities may provide the classroom and clinical training portion of the program but the competency evaluation shall be administered by an entity approved by the department.

D. Each training and competency evaluation program shall:

1. maintain qualified, approved personnel for classroom and clinical instruction;
2. protect the integrity of the competency evaluations by keeping them secure;
3. utilize a pass rate of a least 70 percent for each individual student; and