



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

June 8, 2023

Dear Commenter:

LDH appreciates your submitting comments regarding the Notice of Intent (“NOI”), entitled “List of Conditions that Shall Deem an Unborn Child “Medically Futile” (LAC 48:I.401), published in the September 20, 2022 edition of the Louisiana Register. LDH has reviewed and considered all of the comments it received in connection with that NOI. The comments broadly fall into three categories, and LDH offers the following responses to each:

Category I. A list (of conditions) is neither necessary nor advantageous

LDH is required to promulgate the list per Act 545 (2022 Regular Session). Specifically, the Act states, in pertinent part:

The Louisiana Department of Health shall promulgate, in accordance with the Administrative Procedure Act, administrative rules establishing an exclusive list of anomalies, diseases, disorders, and other conditions which shall be deemed "medically futile" for purposes of this Subpart.

Category II. The list omits certain conditions that should be included, and includes certain conditions that should be omitted

The definition of “medically futile” in the Act covers only profound and irremediable *congenital* or *chromosomal* anomalies that are incompatible with sustaining life after birth. Conditions that are not congenital or chromosomal do not meet the Act’s definition of “medically futile”. Likewise, conditions that are not both *profound* and *irremediable* and *incompatible with sustaining life after birth* do not meet the Act’s definition of “medically futile”.

Many of the additional conditions proposed in the comments for inclusion are disqualified from inclusion due to failure to meet such criteria. Further, LDH has concluded that Item #26 (§401.A.26) in the NOI sufficiently addresses other conditions at this time.

Additionally, LDH has concluded that all of the conditions proposed in the comments for deletion (from the list of conditions) should remain thereon, as it is LDH’s decision that all of such conditions meet the definition of “medically futile” in the Act.

Category III. §401.A.26 should not be limited to congenital or chromosomal anomalies

The definition of “medically futile” in the Act covers only congenital or chromosomal anomalies. Anomalies resulting from other underlying causes do not meet the Act’s definition of “medically futile”.

Sincerely,

Louisiana Department of Health