



State of Louisiana
Louisiana Department of Health
Office of the Secretary

To: The Honorable John Bel Edwards, Governor, State of Louisiana (Via Email)
The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (Via Email)
The Honorable John A. Alario, Jr., President, Louisiana Senate (apa.senatepresident@legis.la.gov)
The Honorable Taylor F. Barras, Speaker, Louisiana House of Representatives (apa.housespeaker@legis.la.gov)
Catherine Brindley, Editor, *Louisiana Register* (reg.submission@la.gov)
Senate Health and Welfare Committee (apa.s-h&w@legis.la.gov)
House Health and Welfare Committee (apa.h-hw@legis.la.gov)

From: Rebekah E. Gee MD, MPH, Secretary, Louisiana Department of Health
By: Cindy Rivers for

Date: December 9, 2019

Re: Justification of Promulgation of Emergency Rule
LAC 48:I.9781 – Nursing Facilities – Virtual Visitation

MEMORANDUM

The Louisiana Department of Health finds it necessary to re-declare by emergency procedure rules pertaining to the licensing standards for nursing facilities to prevent imminent peril to the public health, safety, or welfare of nursing home residents whose health and safety is threatened by abuse and neglect. Effective January 1, 2019, all nursing home residents within the State of Louisiana are afforded the right to have a monitoring device placed in their room so that family caregivers may remain connected and be a part of the resident's care team. The legislation directs the Department of Health to adopt emergency rules in order to provide for the conditions for consent relative to the installation and use of monitoring devices. Pursuant to the legislation, the Department of Health, in

November 2018 adopted rules via the emergency rulemaking procedure to provide for the conditions that must be present for a nursing home resident to be able to consent to the placement of a monitoring device. The Department of Health finds it necessary to re-declare an emergency in order to prevent the rules governing consent to placement of a monitoring device from expiring before the final rule is adopted.

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Cecile Castello, Director of Health Standards, at Cecile.Castello@la.gov or (225) 342-4997 or Kimberly Humbles, Esq. General Counsel, at Kimberly.Humbles@la.gov or (225) 342-2556.

Attachments: Emergency Rule – LAC 48:I.9781

Cc: Cecile Castello, RN, Director, Health Standards Section, Department of Health
Brenda Blanchard, BSN, RN, Medical Certification Manager
Kimberly Humbles, Esq., General Counsel, Louisiana Department of Health
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing**

**Nursing Facilities
Licensing Standards
Virtual Visitation
(LAC 48:I.9781)**

The Department of Health, Bureau of Health Services Financing adopts LAC 48:I.9781 as authorized by R.S. 36:254 and 40:1193.1-1193.11. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 596 of the 2018 Regular Session of the Louisiana Legislature, hereafter referred to as the Nursing Home Virtual Visitation Act, enacted R.S. 40:1193.1-1193.11 which directed the Department of Health to establish provisions governing nursing facility virtual visitation in order to provide for consent, by a nursing facility resident or a legal representative, relative to the authorization for installation and use of a monitoring device in the room of the resident.

In compliance with the requirements of Act 596, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the licensing of nursing facilities in order to adopt

provisions governing virtual visitation and promulgated an accompanying Notice of Intent (*Louisiana Register*, Volume 44, Number 11). Based on comments received, the department has now determined that it is necessary to abandon the November 20, 2018 Notice of Intent, to amend the November 18, 2018 Emergency Rule and to promulgate a new Notice of Intent in order to further clarify the provisions governing virtual visitation. This action is being taken to promote the health and well-being of Louisiana residents in nursing facilities that consent to the authorization for installation and use of a monitoring device in the resident's room.

Effective December 20, 2019, the Department of Health, Bureau of Health Services Financing amends the provisions of the November 20, 2018 Emergency Rule governing the licensing of nursing facilities in order to adopt provisions governing virtual visitation.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter C. Resident Rights

§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, or 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 ~~the resident's admitting physician, the resident's personal physician, or the medical director of the nursing facility; such determination shall be documented in the resident's medical record.~~ 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 45:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH

Secretary

By Cindy Rivers for
12/10/19