

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 amends the provisions governing the licensing of nursing facilities in order to adopt 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. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2018-19.

Effective November 20, 2018, the Department of Health, Bureau of Health Services Financing amends the provisions 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.

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.

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 44:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. 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