



State of Louisiana

Louisiana Department of Health
Office of the Secretary

To: The Honorable John Bell Edwards, Governor, State of Louisiana (Via Email Delivery)
The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (Via Email Delivery)
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 Rive for

Date: September 20, 2019

Re: Justification of Promulgation of Emergency Rule
LAC 48:I.6210 – Therapeutic Group Homes Licensing Standards Criminal Background Checks

MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 40: 950 *et seq.*) as amended, the Louisiana Department of Health, Bureau of Health Services Financing, is submitting the following emergency rule that amends LAC 48:I.6210.

This action is being taken as authorized by R.S. 36:254 and Act 243 of the 2019 Louisiana Legislature. Act 243 of the 2019 Regular Session of the Louisiana Legislature requires that licensing standards for therapeutic group homes (TGH) comply with federal guidelines for Bureau of Criminal Identification and Information criminal background checks and Department of Children and Family Services (DCFS) abuse/neglect registry checks to provide criminal history record information for owners, operators, managers or administrators, employees, contractors, or paid or unpaid volunteers or interns of a TGH that have the potential of providing daily care or supervision to children or youth in the custody, or under the supervision, of any Louisiana state government agency. In compliance with Act 243, the Department of Health, Bureau of Health Services Financing now adopts provisions governing the licensing of TGHs in order to comply with federal criminal background check and DCFS abuse/neglect registry check requirements.

This action is being taken to promote the health and welfare of children and youth receiving therapeutic group homes services. It is estimated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2019-2020.

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.6210

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

DECLARATION OF EMERGENCY

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

**Therapeutic Group Homes
Licensing Standards
Criminal Background Checks
(LAC 48:I.6210)**

The Department of Health, Bureau of Health Services Financing adopts LAC 48:I.6210 as authorized by R.S. 36:254 and Act 243 of the 2019 Regular Session of the Louisiana Legislature. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 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 243 of the 2019 Regular Session of the Louisiana Legislature requires that licensing standards for therapeutic group homes (TGH) comply with federal guidelines for Bureau of Criminal Identification and Information criminal background checks and Department of Children and Family Services (DCFS) abuse/neglect registry checks to provide criminal history record information for owners, operators, managers or administrators, employees, contractors, or paid or unpaid volunteers or interns of a TGH that have the potential of providing daily care or supervision to children or youth in the custody, or under the supervision, of any Louisiana state government agency. In

compliance with Act 243, the Department of Health, Bureau of Health Services Financing now adopts provisions governing the licensing of TGHs in order to comply with federal criminal background check and DCFS abuse/neglect registry check requirements.

This action is being taken to promote the health and welfare of children and youth receiving therapeutic group homes services. It is estimated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2019-2020.

Effective September 20, 2019, the Department of Health, Bureau of Health Services Financing adopts licensing provisions governing criminal background checks and abuse/neglect registry checks for therapeutic group homes.

Title 48
PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Licensing

Chapter 62. Therapeutic Group Homes

Subchapter B. Licensing

§6210. Criminal Background Checks; Prohibitions to Ownership of and Employment at a Therapeutic Group Home; Process; Fees

A. The provisions of this Section shall apply to the following persons:

1. any person who owns, operates, or manages a licensed therapeutic group home (TGH);

2. any person who has applied for a license to operate a therapeutic group home;

3. any person who is employed by, is contracted by, volunteers at, or interns with a therapeutic group home;

4. any person who has applied to be employed or contracted by a therapeutic group home; and

5. any person who has applied to volunteer or intern with a therapeutic group home.

B. The provisions of this Section shall not apply to contractors or other individuals providing a service at the therapeutic group home who are not employees, volunteers, interns, or contracted members of the staff of the therapeutic group home, including but not limited to plumbers, landscapers, or visiting resources.

1. For purposes of this Section only, a volunteer is defined as an individual who offers direct care services to clients at the TGH on behalf of the provider for the benefit of the provider willingly and without pay.

2. For purposes of this Section only, an intern is defined as a student or trainee, either paid or unpaid, who offers direct care services to clients of the TGH on behalf of the provider in order to gain work or clinical experience.

C. No person who has been convicted of, or pled guilty to, or pled nolo contendere to a crime listed in §6210.C.1-5, or whose name is recorded on the State Central Registry within the Department of Children and Family Services (DCFS) as a perpetrator for a justified finding of abuse or neglect of a child, or whose name is on any other state's child abuse and neglect registry or repository, may be the owner, operator, manager or administrator of a TGH, be employed by or contracted with a TGH, or be a volunteer or intern, paid or unpaid, at a TGH:

1. R.S. 14:28.1, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:32.12, 14:35.2, 14:38.1; 14:40.1, 14:40.3, 14:40.7, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:44.2, 14:45, 14:46.4, 14:66, 14:74, 14:79.1, 14:80, 14:80.1, 14:81, 14:81.1., 14:81.2, 14:81.3, 14:81.4, 14:81.5, 14:82, 14:82.1, 14:82.2, 14:83, 14:83.1, 14:83.2, 14:83.3, 14:83.4, 14:85, 14:86, 14:89, 14:89.1, 14:89.2, 14:92, 14:93, 14:93.2.1, 14:93.2.1, 14:93.3, 14:93.4, 14:93.5, 14:106, 14:282, 14:283, 14:283.1, 14:284, 14:286, crimes of violence as defined in R.S. 14:2(B), sex offenses as defined in R.S. 15:541, or the attempt or conspiracy to commit any of these offenses;

2. R.S. 40:966(A), 40:967(A), 40:968(A), 40:969(A), and 40:970(A), or the attempt or conspiracy to commit any of these offenses;

3. a felony offense involving theft, pursuant to R.S. 14:67, or theft of assets of an aged person or person with a disability, pursuant to R.S. 14:67.1, in excess of \$500; or, a felony offense involving theft in any case in which the offender has been previously convicted of theft, pursuant to either R.S. 14:67 or R.S. 14:67.1, regardless of the value of the instant theft; or the attempt or conspiracy to commit any of these offenses;

4. those of a jurisdiction other than Louisiana which, in the judgment of the department, would constitute a crime under the provisions cited in this Section; and

5. those under the Federal Criminal Code having analogous elements of criminal and moral turpitude.

D. Notwithstanding the provisions of §6210.C above, LDH may, at its discretion, approve a waiver for a person who has a felony conviction for physical assault or battery as provided for in R.S. 14:34 and 14:37, or for a drug-related offense provided for in R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A), provided that the conviction was at least five years from the date of the request for waiver.

E. Criminal Background Checks, Process and Fees

1. The Department of Health shall request, consistent with the provisions of R.S. 15:587.1.2, from the Bureau of Criminal Identification and Information (the bureau), information concerning whether or not any of the persons listed in §6210.A has been arrested for, convicted of, or pled nolo contendere to any criminal offense.

a. The request shall be on a form prepared by the bureau and signed by a responsible official of LDH making the request;

b. The request shall include a statement signed by the person about whom the request is made which gives his/her permission for such information to be released; and

c. The person about whom the request is made shall submit his/her fingerprints in a form acceptable to the bureau, if requested by the bureau or the Health Standards Section (HSS).

F. In responding to a request for information regarding criminal history, the bureau shall make available a record of all criminal arrests and convictions prior to the date of request.

G. Upon receiving a request for information regarding criminal history, pursuant to R.S. 15:587.1.2 and R.S. 40:2008.10 (or their successor statutes) and this licensing rule, the bureau shall survey its criminal history records and

identification files and make a simultaneous request of the Federal Bureau of Investigation for like information from other jurisdictions. The bureau shall provide a report to HSS promptly and in writing, but provide only such information as is necessary to specify whether or not that person has been arrested for, or convicted of, or pled guilty to, or pled nolo contendere to any crime or crimes, the crimes for which he has been arrested, or convicted, or to which he has pled nolo contendere, and the date or dates on which they occurred.

1. The report provided by the bureau to HSS shall include arrests, convictions, or other dispositions, including convictions dismissed pursuant to Code of Criminal Procedure Articles 893 or 894.

2. When an individual's record contains information which has been expunged, the bureau shall include in its report to HSS the date of the arrest and a notation that the individual's record contains information which has been expunged and that HSS may contact the bureau in order to obtain further information regarding the expunged information.

H. The LDH, as recipient of the criminal background report and information from the bureau, shall maintain the confidentiality of such criminal history information in accordance with applicable federal and/or state law.

1. The bureau's criminal background report, and any information contained therein, including expunged information, shall not be deemed a public record.

2. The information may be used or admitted as evidence in any court proceeding, or employment or disciplinary hearing, in which LDH is an authorized participant.

I. State Central Registry

1. In addition to the criminal background checks, HSS requires that the TGH request information from the DCFS concerning whether or not any of the persons listed in §6210.A is recorded on the State Central Registry as a perpetrator for a justified finding of abuse or neglect of a child.

a. Such information shall be submitted to HSS for its review in §6210.K.

b. If the TGH fails to timely submit this information to HSS for its review, HSS may seek the information directly from DCFS and may sanction the TGH for failing to submit such information to LDH.

J. Other State Registries of Abuse/Neglect

1. For any persons listed in §6210.A who has lived in any other state within the last five years, HSS shall request information from the child abuse and neglect registry or repository of each of those states as to whether the

individual's name is recorded on that state's registry or repository.

2. If such information is not readily available or sent to HSS within 15 days of the request, HSS shall complete its review under §6210.K; however, if HSS subsequently receives information from other states' registries or repositories, HSS reserves the right to re-open its review and send a supplemental determination on the individual.

K. For the persons listed in §6210.A, HSS shall review the criminal background check, the State Central Registry (for abuse/neglect of a child), and any other applicable states' child abuse and neglect registry or repository, to determine if the person is eligible to be an owner, operator, manager, or administrator of a TGH, is eligible to be employed by or contracted with a TGH, or is eligible to be a volunteer or intern, paid or unpaid, at a TGH.

1. Notification shall be sent to the TGH.

2. The HSS shall retain such records and determination within a section of the TGH's licensing file for a period of five years, and may be shared with state or federal agencies with authority to access such information; however, such records and determinations are not public records.

L. The costs of any criminal background checks and reviews/checks of abuse/neglect registries or repositories

required under statute or this licensing rule shall be the responsibility of the TGH.

1. The HSS may charge a processing fee not to exceed \$15 for the processing of the criminal background check and the review of abuse/neglect registries or repositories.

2. Additionally, HSS hereby requires that the TGH pay the charges and fees of the bureau for a state criminal history report, of the Federal Bureau of Investigation for a federal criminal history report, of the DCFS State Central Registry, and of any other state's registry or repository of abuse/neglect; such payments shall be made directly to those bureaus and agencies.

M. The HSS may request any information necessary from the TGH, from any person subject to the provisions of this Section, or from any other appropriate agency to ensure compliance with the requirements of criminal background checks and abuse/neglect registries or repositories.

N. Existing, Active TGH Licensed Before October 1, 2019

1. For any existing, operating TGH licensed as of October 1, 2019, the licensee shall submit to HSS on or before October 15, 2019, the following:

a. A list of all owners, operators, managers, administrators, employees, contractors, volunteers, and interns of the TGH as of October 15, 2019; such list shall indicate

whether any such person has worked in another state within the last five years, including the states where worked, if applicable; and

b. Evidence to HSS that none of these individuals are recorded on the State Central Registry (for abuse/neglect of a child) via DCFS.

2. Each such person listed shall:

a. Submit a signed form or statement by October 15, 2019, giving permission for a criminal background check to be conducted by the bureau, and for the results/report to be submitted to HSS, pursuant to statute and this licensing rule; and

b. Submit his/her fingerprints to the bureau by October 15, 2019;

c. Submit an attestation to HSS on a form provided by HSS wherein the person attests that his/her signed form/statement and his/her fingerprints have been so submitted; this attestation must be received by HSS by October 18, 2019.

3. A person who has timely submitted his/her signed form/statement and his/her fingerprints to the bureau, who has timely submitted the attestation in §6210.N.2, and who is not recorded on the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository, may continue to own, operate, manager, administer, be employed,

be contracted, volunteer, and/or intern with the TGH until HSS receives and reviews the information or report from the bureau and receives and reviews any information or report from the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository.

4. If such information reveals that the person cannot be an owner pursuant to this Section, the department shall notify the licensed TGH, and the TGH shall immediately remove the person from ownership or shall immediately surrender its license.

5. If such information reveals that the person cannot be an operator, manager, administrator, employee, contractor, volunteer, or intern with the TGH pursuant to this Section, HSS shall notify the licensed TGH and the TGH shall immediately terminate the person.

6. No new owner may be obtained and no new operator, administrator, manager, employee, contractor, volunteer, or intern may be hired after October 15, 2019, until that person has submitted his/her signed form/statement and his/her fingerprints to the bureau and HSS has:

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of

a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an owner, operator, administrator, manager, employee, contractor, volunteer, or intern pursuant to the provisions of this Section or of the applicable statutes.

0. A TGH licensed after October 1, 2019

1. Any TGH licensed after October 1, 2019, shall submit with its licensing application to HSS, a list of all proposed owners, operators, administrators, managers, employees, contractors, volunteers, and interns. No new TGH may be licensed after October 1, 2019, until all persons listed have submitted signed forms/statements and fingerprints to the bureau, and HSS has

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an owner, operator, administrator, manager, employee, contractor, volunteer, or intern pursuant to the provisions of this Section or of the applicable statute.

2. No new owner or operator may be obtained and no new administrator, manager, employee, contractor, volunteer, or intern may be hired by the TGH after submitting the initial license application, until that person has submitted his/her signed form/statement and his/her fingerprints to the bureau, and HSS has:

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an owner, operator, administrator, manager, employee, contractor, volunteer, or intern pursuant to the provisions of this Section or of the applicable statutes.

P. Subject to §6210.P.1, LDH's review and determination regarding criminal background check and abuse/neglect registry verification(s) for any person subject to the provisions of this Section, is specific to that licensed TGH only. A separate review and determination, along with new criminal background check and abuse/neglect registry verifications, shall be necessary for any person (who is subject to the provisions of this Section) who is an owner, operator, manager, administrator,

employee, contractor, volunteer, or intern at a separately licensed TGH.

1. If two or more licensed TGHs are owned by the same corporate entity and such is noted on the license application and license, then LDH, in its discretion, may allow its review and determination regarding criminal background check and abuse/neglect registry verification for a particular owner, operator, manager, administrator, employee, contractor, volunteer, or intern who will be at both (or multiple) of the owned TGHs, to be based on the same criminal background check and abuse/neglect registry verifications, provided that the background check and verifications were conducted within the last 90 days.

Q. In addition to other sanctions that may be imposed on a TGH, LDH may also deny initial licensure, revoke an existing license, or deny renewal of a license of a TGH that violates the provisions of this Section or of the applicable statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Act 243 the 2019 Regular Session of the Louisiana Legislature.

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.

By Cindy River for
Rebekah E. Gee MD, MPH

Secretary

9.20.19

PROVIDER IMPACT STATEMENT

Therapeutic Group Homes Licensing Standards Criminal Background Checks

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this Emergency Rule has been considered. It is anticipated that this Emergency Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Rebekah E. Gee MD, MPH

Secretary