

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Facility Need Review
(LAC 48:I.Chapter 125)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 125 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116. 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.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the facility need review (FNR) process to adopt provisions governing the inclusion of outpatient abortion facilities in the FNR Program (*Louisiana Register*, Volume 38, Number 8). The department promulgated an Emergency Rule which amended the provisions governing the FNR Program in order to revise the definition for *home and community-based service providers* to include monitored in-home caregiving (MIHC) services, and to revise the provisions governing the service area for adult day health care providers (*Louisiana Register*, Volume 40, Number 11). The department now proposes to amend the provisions of the November 20, 2014

Emergency Rule to: 1) Clarify the definition of *adult residential care* providers; 2) provide a process for supplementing an FNR application that has been denied prior to appeal; 3) provide time frames within which *certain* providers must become licensed after they have been approved through the FNR process; and 4) amend the provisions governing the FNR process for nursing facilities relative to the statutory moratorium.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the FNR Program.

Effective September 20, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the November 20, 2014 Emergency Rule governing the Facility Need Review Program in order to revise and clarify these provisions.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. ...

Adult Residential Care Provider (ARCP)—a facility, agency, institution, society, corporation, partnership, company, entity, residence, person or persons, or any other group, which provides adult residential care services for compensation to two or more adults who are unrelated to the licensee or operator. Adult residential care includes, but is not limited to the following services: lodging, meals, medication administration, intermittent nursing services, and assistance with personal hygiene, assistance with transfers and ambulation, assistance with dressing, housekeeping and laundry. For the purposes of this FNR Rule, ARCP refers to an entity that is or will be licensed as an "ARCP Level 4 - Adult Residential Care Provider".

Home and Community Based Service (HCBS) Providers—those agencies, institutions, societies, corporations, facilities, person or persons, or any other group intending to provide or providing respite care services, personal care attendant (PCA) services, supervised independent living (SIL) services, monitored in-home caregiving (MIHC) services, or any combination of services thereof, including respite providers, SIL providers, MIHC providers, and PCA providers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:135 (January 2015), LR 41:

§12505. Application and Review Process

A. - B.3.b. ...

4. If FNR approval is denied, the applicant may choose to:

a. pursue an Administrative Appeal pursuant to Subchapter G §12541; or,

b. within 30 days of receipt of the notice of denial of FNR approval, and prior to filing an Administrative Appeal, request a supplemental review of additional documentation to be submitted by the applicant.

i. The time period to submit the supplemental materials shall be no later than 30 days from the date the request is approved by the department and notice received by the applicant. If timely received, the supplemental documentation will be reviewed in conjunction with the original

FNR application. The applicant will receive the results of such review in writing from the department.

ii. In the case of a failure to submit the supplemental materials in a timely manner or, upon a denial of the supplemental application, the applicant may file an administrative appeal of the department's decision with the Division of Administrative Law (DAL). This request shall be submitted within 30 days of the date of receipt of notice of said failure or denial.

iii. Failure to file timely for an administrative appeal shall exhaust the applicant's remedies with the department and the decision to deny FNR approval is final.

c. The administrative appeal shall be conducted by the DAL in accordance with the Administrative Procedure Act.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:812 (August 1995), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), LR 35:2438 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 41:
§12508. Pediatric Day Health Care Providers

A. - E.3. ...

F. The following time frames shall apply for complying with the requirements for obtaining approval of architectural plans and licensure.

1. PDHC facilities which are to be licensed in existing buildings shall have final architectural plans approved no later than six months from the date of the FNR approval. Such facilities shall be licensed within one year from the date of the FNR approval.

2. PDHC facilities which are to be licensed in newly constructed buildings shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within 24 months from the date of the FNR approval.

3. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant.

4. Failure to meet any of the timeframes in this Section could result in an automatic expiration of the FNR approval of the PDHC facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:136 (January 2015), amended LR 41:

§12511. Nursing Facilities

A. - J.4.a. ...

NOTE: Pursuant to LA R.S. 40:2116(D)(2), the Department of Health and Hospitals shall not approve any additional nursing facilities or additional beds in nursing facilities through facility need review. This prohibition shall apply to additional licensed beds as well as Medicaid certified beds. This prohibition shall not apply to the replacement of existing facilities, provided that there is no increase in existing nursing home beds at the replacement facility.

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

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2615 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3264 (November 2011), LR 41:

§12523. Home and Community-Based Service Providers

A. - E.3. ...

F. FNR approved HCBS applicants shall become licensed no later than six months from the date of the FNR approval.

1. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant. Inappropriate zoning is not a basis for extension.

2. Failure to meet any of the timeframes in this Section could result in an automatic expiration of the FNR approval of the HCBS agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2438 (November 2009), amended LR 41:

Subchapter B. Determination of Bed, Unit, Facility, or Agency Need

§12525. Adult Day Health Care Providers

A. ...

B. For purposes of facility need review, the service area for a proposed ADHC provider shall be within a 30 mile radius of the proposed physical address where the provider will be licensed.

C. - E.3. ...

F. The following time frames shall apply for complying with the requirements for obtaining approval of architectural plans and licensure.

1. ADHC facilities which are to be licensed in existing buildings shall have final architectural plans approved no later than six months from the date of the FNR approval. Such facilities shall be licensed within one year from the date of the FNR approval.

2. ADHC facilities which are to be licensed in newly constructed buildings shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within 24 months from the date of the FNR approval.

3. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant.

4. Failure to meet any of the timeframes in this Section could result in an automatic expiration of the FNR approval of the ADHC facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:323 (February 2010), amended LR 41:

§12526. Hospice Providers

A. - E.3. ...

F. The following time frames shall apply for complying with the requirements for obtaining approval of architectural plans and/or licensure.

1. Outpatient Hospice agencies shall be licensed within 6 months from the date of the FNR approval.

2. Inpatient Hospice facilities which are to be licensed in existing buildings shall have final architectural plans approved no later than six months from the date of the FNR approval. Such facilities shall be licensed within one year from the date of the FNR approval.

3. Inpatient Hospice facilities which are to be licensed in newly constructed buildings shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within 24 months from the date of the FNR approval.

4. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant.

5. Failure to meet any of the timeframes in this Section could result in an automatic expiration of the FNR approval of the Hospice agency or facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 38:1593
(July 2012), amended LR 41:

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.

Kathy H. Kliebert

Secretary