

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Developmental Disabilities Licensing Standards (LAC 48:I.8531 and 8591)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.8531 and §8591 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Act 367, the Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the licensing standards of intermediate care facilities for persons with developmental disabilities (ICFs/DD) to update the requirements for visitation by close family members of a resident during a declared PHE.

The department also proposes to adopt provisions requiring the ICF/DD to develop policies and procedures to ensure that residents, family members and/or responsible parties or

guardians are notified upon admission of registered sex offenders by the facility.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 85. Intermediate Care Facilities for Persons with Developmental Disabilities

Subchapter B. Administration and Organization

§8531. Governing Body

A. - I.10. ...

J. The ICF/DD is not required to admit registered sex offenders; however, if the ICF/DD admits a registered sex offender, then the ICF/DD shall develop policies and procedures to ensure that residents, their family members, and/or their responsible parties or guardians are notified upon admission of sex offenders living in the facilities. Such policies and procedures must include provisions for addressing the safety and well-being of other residents, staff, and visitors. The requirement of notification shall continue for as long as the information is considered a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3190

(December 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter F. Provider Responsibilities

§8591. Visitation by Close Family Members of a Resident During a Declared Public Health Emergency

A. - F. ...

G. Subject to compliance with the requirements of §8591.B-D, each ICF/DD shall allow close family members of the residents to visit a resident of the ICF/DD during a declared PHE when a resident, or his legal or designated representative, requests a visit with close family members of the resident, subject to the following conditions and requirements:

1. - 2. ...

3. An ICF/DD's policy and procedure on visitation by close family members shall, at a minimum, require the following:

a. that the ICF/DD shall give special consideration and priority for visitation by close family members and other designated persons to residents receiving end-of-life care;

b. that visitation by close family members and other designated persons ~~will~~may be screened for infectious agents or infectious diseases and will pass such screening prior to each visitation, utilizing at least the current screening or testing methods and protocols recommended by the Centers for

Disease Control and Prevention, as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the ICF/DD shall utilize those methods and protocols;

c. that a close family member or other designated person may not be allowed to visit an ICF/DD resident if such close family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such close family member or other designated person tests positive for an infectious agent or infectious disease;

d. that a close family member or other designated person may not be allowed to visit an ICF/DD resident if the close family member and other designated person refuses to comply with the provisions of the ICF/DD's policy and procedure or refuses to comply with the ICF/DD's reasonable time, place, and manner restrictions;

e. that close family members and other designated persons may be required to wear personal protective equipment as determined appropriate by the ICF/DD, considering the resident's medical condition or clinical considerations;

e.i. - f. ...

g. that an ICF/DD's policy and procedure include provisions for compliance with any federal law,

regulations, requirements, orders, or guidelines issued by any federal government agency regarding visitation in ICF/DDs during a declared PHE; ~~and~~

h. that ~~includes provisions for off-site visitation, allowing a~~ the resident and close family ~~member to visit an ICF/DD resident away from the facility campus; the policy and procedure~~ members shall ~~include requirements for allowing~~ have ~~the resident to return to the facility upon certain conditions, such as meeting testing and isolation requirements recommended by the CDC, the Centers for Medicare and Medicaid Services (CMS), a Louisiana SHO order~~ right to consensual, nonsexual physical contact such as hand holding or ~~emergency notice, or a governor's executive order or proclamation.~~ hugging; and

i. that includes provisions for off-site visitation, allowing a close family member to visit an ICF/DD resident away from the facility campus; the policy and procedure shall include requirements for allowing the resident to return to the facility upon certain conditions, such as meeting testing and isolation requirements recommended by the CDC, the Centers for Medicare and Medicaid Services (CMS), a Louisiana SHO order or emergency notice, or a governor's executive order or proclamation.

4. An ICF/DD shall submit a written copy of its visitation policies and procedures on close family member visitation, to the Health Standards Section surveyors of the LDH at the initial licensure survey.

5. After licensure, an ICF/DD shall make its visitation policies and procedures available for review by the Department of Health at any time, upon request.

6. An ICF/DD shall within 24 hours after establishing its written policies and procedures on close family member visitation, make its written policies and procedures easily accessible from the home page of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1308 (September 2021), amended LR 49:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that the requirements for visitation by close family members of

an ICF/DD resident during a declared public health emergency comply with legislative mandates.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed 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.

Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD

Secretary