

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

#### Nursing Facilities Licensing Standards (LAC 48:I.Chapter 97)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 97 as authorized by R.S. 36:254 and R.S. 40:2009.2-2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 3 of the 2023 Regular Session of the Louisiana Legislature allows the Department of Health the option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department 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 Acts 3 and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan and to amend the

provisions governing visitation by clergy, immediate family members and other designated persons during a declared PHE.

## **Title 48**

### **PUBLIC HEALTH-GENERAL**

#### **Part I. General Administration**

#### **Subpart 3. Licensing and Certification**

### **Chapter 97. Nursing Facilities**

#### **Subchapter B. Organization and General Services**

#### **§9767. Emergency Preparedness**

A. - A.5. ...

B. Emergency Preparedness Plan Approval Process

1. - 4.b. ...

5. Revision and Resubmission of Emergency Preparedness

Plan

a. - b. ...

c. The department shall review the nursing home's updated and revised emergency preparedness plan to confirm that all required changes, amendments, or revisions have been incorporated into the plan, and it shall approve the emergency preparedness plan and issue an approval letter to the nursing home. If the required changes, amendments, or revisions have not been incorporated, the department shall reject the emergency preparedness plan and issue a letter of rejection to the nursing home. The department ~~shall not issue a license to~~ may revoke or

~~renew~~deny renewal of a license ~~of~~to a nursing home that has received a letter of rejection of its emergency preparedness plan.

6. - 8.f. ...

9. Annual Review of Emergency Preparedness Plan

a. - f.iv. ...

(a). The department ~~shall not issue a license to~~may revoke or ~~renew~~deny renewal of a license ~~of~~to a nursing home that has received a letter of rejection of its emergency preparedness plan.

B.9.v. - K.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2-2009.44.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1905 (November 2016), amended LR 48:1290 (May 2022), LR 49:1076 (June 2023), LR 49:

**§9769. Visitation by Members of the Clergy During a Declared Public Health Emergency**

A. For purposes of §9769 and §9771, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or current law

B. - H. ...

I. Subject to the requirements of §9769.E-G, each nursing facility shall allow members of the clergy to visit residents of the nursing facility during a declared public health emergency

(PHE) when a resident, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. - 2. ...

3. A nursing facility's policy and procedure on clergy visitation~~shall~~, at a minimum, ~~require~~requires the following:

a. that the nursing facility shall give special consideration and priority for clergy visitation to residents receiving end-of-life care;

b. that a clergy member ~~will~~may be screened for infectious agents or infectious diseases, 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 nursing facility shall utilize those methods and protocols;

c. that a clergy member may not be allowed to visit a nursing facility resident if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

d. that a clergy member may not be allowed to visit a nursing facility resident if the clergy member refuses to

comply with the provisions of the nursing facility's policy and procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions; and

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to clergy members.

f. ...

g. that a ~~nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders,~~ resident shall have the right to consensual, nonsexual physical contact such as hand holding or ~~guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency.~~ hugging with a member of the clergy; and

h. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency.

4. A nursing facility shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1309 (September 2021), amended LR 49:

**§9771. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency**

A. - D. ...

E. Subject to the requirements of §9771.A-C, each nursing facility shall allow immediate family members and other designated persons to visit a resident of the nursing facility during a declared public health emergency (PHE) when a resident, or his legal or designated representative, requests a visit with

immediate family members and other designated persons, subject to the following conditions and requirements:

1. - 2. ...

3. A nursing facility's policy and procedure on visitation by immediate family members and other designated persons~~shall~~, at a minimum, ~~require~~requires the following:

a. that the nursing facility shall give special consideration and priority for visitation by immediate family members and other designated persons to residents receiving end-of-life care;

b. that visitation by immediate family members of the residents 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 nursing facility shall utilize those methods and protocols;

c. that an immediate family member or other designated person may not be allowed to visit a nursing facility resident if such immediate family member or other designated person has obvious signs or symptoms of an infectious agent or

infectious disease, or if such immediate family member or other designated person tests positive for an infectious agent or infectious disease;

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

e. that immediate family members and other designated persons may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to immediate family members and other designated persons;

f. ...

g. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency; ~~and~~

h. that includes provisions for off-site visitation, allowing an immediate family member or other



designated person to visit a nursing facility resident away from the facility campus~~;~~ and

i. that a resident and an immediate family member or other designated person shall have the right to consensual, nonsexual physical contact such as hand holding or hugging.

4. A nursing facility shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1310 (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 clergy, immediate family members, and other persons designated by nursing facility residents 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, but may impact the provider's ability to provide the same level of service as described in HCR 170 if the nursing facility receives a letter of rejection of its emergency preparedness plan and LDH chooses to revoke or deny renewal of its license.

### **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