

## **NOTICE OF INTENT**

### **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 proposes to adopt LAC 48:I.9781 as authorized by R.S. 36:254 and 40:1193.1-1193.11. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, 49:950 et seq.

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 promulgated an Emergency Rule which amended the provisions governing the licensing of nursing facilities in order to adopt provisions governing virtual visitation and promulgated an accompanying Notice of Intent (*Louisiana Register*, Volume 44,

Number 11). Based on comments received, the department determined that it was necessary abandon the November 20, 2018 Notice of Intent and to amend the November 20, 2018 Emergency Rule in order to further clarify the provisions governing virtual visitation (*Louisiana Register*, Volume 45, Number 12). This proposed Rule is being promulgated in order to continue the provisions of the November 20, 2018 and the December 20, 2019 Emergency Rules.

## **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, and any 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 any one of the following persons in the following order of priority, if there is no person in a prior class who is reasonably available and willing to make such determination:

- a. the resident's personal physician;
- b. the resident's admitting physician; or
- c. the medical director of the nursing facility.

NOTE: 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; further, the policy shall be in compliance with the provisions of the Nursing Home Visitation Act of 2018 enacted by the Louisiana Legislature, and any such amendments enacted thereafter.

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 46:

**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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

**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 may have a negative impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 since nursing facility residents that consent to virtual visitation or their families are responsible for the costs associated with the installation and use of monitoring devices in the residents' rooms.

**Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:965.2 et seq.

**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 Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on January 29, 2020.

The department will conduct a public hearing at 9:30 a.m. on January 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. Parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing

attendees when the parking ticket is presented to LDH staff at the hearing.

Rebekah E. Gee MD, MPH

Secretary