

NOTICE OF INTENT

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

**Adult Residential Care Providers
Licensing Standards
(LAC 48:I. Chapter 68)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 68 governing the licensing standards for adult residential care providers as authorized by R.S. 36:254 and R.S. 40:2166.1-2166.8 et seq. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed LAC 48:I.Chapter 88 in its entirety and repromulgated all of the provisions governing the licensing standards for adult residential care providers (ARCPs) and adult residential care homes under LAC 48:I.Chapter 68 in order to incorporate those provisions under a single comprehensive Rule in the *Louisiana Administrative Code (Louisiana Register, Volume 41, Number 6)*.

The Department of Health, Bureau of Health Services Financing now proposes to amend the provisions governing the licensing standards for ARCPs in order to include specific

provisions for continuing education for ARCP administrators and to ensure consistency with other licensing standards.

Title 48

PUBLIC HEALTH GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 68. Adult Residential Care Providers

Subchapter A. General Provisions

§6803. Definitions and Abbreviations

* * *

Direct Care Staff—unlicensed staff who provide personal care or other services and support to persons with disabilities, or to the elderly to enhance their well-being, and who are involved in face-to-face direct contact with the participant.

* * *

Specialized Dementia Care Program—as defined in R.S. 40:1101.2, a special program or unit that segregates residents with a diagnosis of probable Alzheimer's disease or a related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area; and that advertises, markets, or otherwise promotes the ARCP as providing specialized Alzheimer's/dementia care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40:1101.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1086 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Subchapter B. Administration and Organization

§6829. Policy and Procedures

A. - B.4. ...

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether that abuse or mistreatment is done by another staff member, a family member, a resident or any other person;

6. a policy to prevent discrimination;

7. a policy that addresses the prohibitive use of social media;

8. a policy for conducting statewide criminal background history checks; and

9. a policy for checking the Direct Service Worker Registry and documentation of such checks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1095 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Subchapter F. Requirements Related to Staff, Record-Keeping and Incident Reports

§6863. General Provisions

A. - F. ...

G. Criminal history checks and offers of employment shall be completed in accordance with R.S. 40:1203.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1105 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

§6865. Staffing Requirements

A. - A.1.c.i.(c). ...

ii. For levels 3 and 4, the director shall meet one of the following criteria upon date of hire:

(a). a bachelor's degree plus two years of administrative experience in the fields of health, social services, geriatrics, management or administration;

(b). in lieu of a bachelor's degree, six years of administrative experience in health, social services, geriatrics, management or administration;

(c). a master's degree in geriatrics, health care, human service related field, management or administration; or

(d). be a licensed nursing facility administrator.

A.1.c.iii. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1105 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

§6867. Staff Training

A. - A.2. ...

3. Orientation shall be completed within 14 days of hire and shall include, in addition to the topics listed in §6867.B, the following topics:

A.3.a. - B.6. ...

C. Training for Direct Care Staff

1. In addition to the topics listed in §6867.A.3 and §6867.B, orientation for direct care staff shall include an evaluation to ensure competence to provide ADL and IADL assistance. A new employee shall not be assigned to carry out a

resident's PCSP until competency has been demonstrated and documented.

2. - 4. ...

5. The requirements of §6867.C.1 may qualify as the first year's annual training requirements. However, normal supervision shall not be considered to meet this requirement on an annual basis.

D. Continuing Education for Directors

1. All directors shall obtain 12 continuing education units per year that have been approved by any one of the following organizations:

- a. Louisiana Assisted Living Association (LALA);
- b. Louisiana Board of Examiners of Nursing Facility Administrators;
- c. LeadingAge Gulf States;
- d. Louisiana Nursing Home Association (LNHA);

or

- e. any of the national assisted living associations, including:
 - i. National Center for Assisted Living (NCAL);
 - ii. Argentum (formerly ALFA); or
 - iii. LeadingAge;

2. Topics shall include, but not be limited to:
 - a. person-centered care;
 - b. specialty training in the population served;
 - c. supervisory/management techniques; and
 - d. geriatrics.

3. -4. Repealed.

E. - F.10.b ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1106 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Subchapter H. Physical Environment

§6891. Resident Personal Space

A. - C.9. ...

D. Requirements for Resident Apartments in levels 3 and 4

1. - 5. ...

a. It is recognized that there may be more individuals in an ARCP due to the resident and a spouse or partner sharing a living unit than is listed as the total licensed capacity.

6. - 10. ...

11. Kitchenettes

a. For each apartment, the ARCP shall provide, at a minimum, a small refrigerator, a wall cabinet for food storage, a small bar-type sink, and a counter with workspace and electrical outlets, a small cooking appliance, for example, a microwave or a two-burner cook top.

11.b. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1115 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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 assuring the safe operation of facilities that render adult residential care services.

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 and community asset development as described in R.S. 49:973.

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.

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 proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, August 24, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person

Preparing

Statement: Yolanda Ellis

Phone: 342-3930

Dept.: Health

Office: Bureau of Health Services
Financing

Return P.O. Box 91030

Address: Baton Rouge, LA

Rule Title: Adult Residential Care Providers
Licensing Standards

Date Rule Takes Effect: October 20, 2017

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$972 (SGF) will be expended in FY 17-18 for the state's administrative expense for the promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the licensing standards for adult residential care providers (ARCPs) in order to include specific provisions and approved sources for continuing education for ARCP administrators and direct care staff; to clarify the requirements relative to criminal background checks, direct service worker registry checks and prohibited use of social media in order to ensure consistency with other licensing standards; and to clarify that licensed capacity is based only on residents of the ARCP facility. It is anticipated that the implementation of this proposed rule will not result in economic costs to ARCPs for FY 17-18, FY 18-19 and FY 19-20, but may be beneficial to ARCPs by clarifying the acceptable continuing education requirements for staff and allowing more flexibility by eliminating the five day timeframe for direct observation to ensure competence.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Donald Kane
Signature of Agency Head
or Designee

Evan Brasel, Staff Director
Legislative Fiscal Officer
or Designee

Cecile Castello
Health Standards Section Director
Typed name and Title of
Agency Head or Designee

7/10/17
Date of Signature

Bethel Ford
LDH/BHSF Budget Head

07/10/17
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the provisions governing the licensing standards for adult residential care providers (ARCPs) in order to include specific provisions and approved sources for continuing education for ARCP administrators and direct care staff; to clarify the requirements relative to criminal background checks, direct service worker registry checks and prohibited use of social media in order to ensure consistency with other licensing standards; and to clarify that licensed capacity is based only on residents of the ARCP facility.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed LAC 48:I.Chapter 88 in its entirety and repromulgated all of the provisions governing the licensing standards for adult residential care providers (ARCPs) and adult residential care homes under LAC 48:I.Chapter 68 in order to incorporate those provisions under a single comprehensive Rule in the Louisiana Administrative Code (Louisiana Register, Volume 41, Number 6).

The Department of Health, Bureau of Health Services Financing now proposes to amend the provisions governing the licensing standards for ARCPs in order to include specific provisions for continuing education for ARCP administrators and to ensure consistency with other licensing standards.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$972 will be expended in FY 17-18 for the state's administrative expense for the promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 17-18	FY 18-19	FY 19-20
PERSONAL SERVICES			
OPERATING EXPENSES	\$972	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$972	\$0	\$0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 17-18, \$972 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	\$972	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$0	\$0	\$0
OTHER (Specify)			
Total	\$972	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
Total			

*Specify the particular fund being impacted

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action?. For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule amends the provisions governing the licensing standards for adult residential care providers (ARCPs) in order to include specific provisions and approved sources for continuing education for ARCP administrators and direct care staff; to clarify the requirements relative to criminal background checks, direct service worker registry checks and prohibited use of social media in order to ensure consistency with other licensing standards; and to clarify that licensed capacity is based only on residents of the ARCP facility.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that the implementation of this proposed rule will not result in economic costs to ARCPs for FY 17-18, FY 18-19 and FY 19-20, but may be beneficial to ARCPs by clarifying the acceptable continuing education requirements for staff and allowing more flexibility by eliminating the five day timeframe for direct observation to ensure competence.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.