

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Facility Need Review Hospital Off-Site Emergency Departments (LAC 48:I.Chapter 125)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 125 as authorized by R.S. 36:254 and R.S. 40:2116. 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, Bureau of Health Services Financing proposes to amend the provisions governing the Facility Need Review (FNR) Program in order to establish a process for licensed hospitals to obtain FNR approval for an emergency department licensed as an off-site campus of a hospital in order to ensure access for patients in need of emergent care services.

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. Definitions. When used in this Chapter the following

terms and phrases shall have the following meanings unless the context requires otherwise.

Department—the Department of Health ~~and Hospitals~~ in the state of Louisiana.

Department of Health ~~and Hospitals~~ (~~DHH~~LDH)—the agency responsible for administering the Medicaid Program in Louisiana

Hospital—any health care facility licensed by the department pursuant to R.S. 40:2100 et seq. An emergency department (ED) of a hospital is an optional service offered by a hospital; the ED may be licensed as a part of the main campus of a hospital or may be licensed as an off-site campus of the hospital.

Hospital Off-Site Emergency Department (HOED)—any department or facility of an existing licensed hospital, located off the main hospital campus, that meets at least one of the following requirements:

a. it is licensed by the State in which it is located under applicable State law as an emergency room or emergency department as a part of the main hospital;

b. it is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent

basis without requiring a previously scheduled appointment; or
c. during the calendar year immediately
preceding the calendar year in which a determination under this
section is being made, based on a representative sample of
patient visits that occurred during that calendar year, it
provides at least one-third of all of its outpatient visits for
the treatment of emergency medical conditions on an urgent basis
without requiring a previously scheduled appointment.

AUTHORITY NOTE: Promulgated in accordance with R.S.
36:254 and 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
41:2636 (December 2015), LR 42:61 (January 2016), amended by the
Department of Health, Bureau of Health Services Financing, LR
44:280 (February 2018), LR 45:

§12503. General Information

A. The Department of Health ~~and Hospitals~~ will conduct a

facility need review (FNR) to determine if there is a need for additional facilities, beds or units to enroll to participate in the Title XIX Program for the following facility types:

B. ...

C. The department will also conduct an FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 4. ...

5. pediatric day health care facilities; ~~and~~

6. behavioral health services (BHS) providers that provide psychosocial rehabilitation (PSR) and/or community psychiatric support and treatment (CPST) services-; and

7. hospital off-site emergency departments (HOEDs) of licensed hospitals.

D. - E. ...

F. ~~Grandfather Provision. An approval shall be deemed to have been granted under this program without review for NFs, ICFs-DD and/or beds that meet one of the following descriptions:~~
Reviews of Emergency Departments Granted Facility Need Review Approval

1. ~~all valid Section 1122 approved health care facilities/beds;~~ Any hospital off-site campus providing emergency services which is granted facility need review approval will be subject to regular reviews for compliance with the Emergency

Medical Treatment and Active Labor Act (EMTALA) and with state provisions governing emergency diagnoses and services including the provisions of R.S. 40:2113.6.

~~2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program;~~

~~3. all valid approvals for health care facilities issued under the Facility Need Review Program; or~~

~~4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.~~2. - 4. Repealed.

G. ~~Additional~~ Grandfather Provision. An approval shall be deemed to have been granted under ~~FNR~~ this program without review for ~~HCBS providers, ICFs/DD, ADHC providers, hospice providers, BHS providers, NFs, ICFs/DD and/or pediatric day health care centers~~ beds that meet one of the following conditions:

1. ~~HCBS providers which were licensed by January 31, 2009 or had a completed initial licensing application submitted to the department by June 30, 2008~~ all valid Section 1122 approved health care facilities/beds;

2. ~~existing licensed ICFs-DD that are converting to the Residential Options Waiver~~ all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this

program;

3. ~~ADHC providers who were licensed as of December 31, 2009 or who had a completed initial licensing application submitted to the department by December 31, 2009, or who are enrolled or will enroll in the Louisiana Medicaid Program solely as a program for all-inclusive care for the elderly provider~~all valid approvals for health care facilities issued under the Facility Need Review Program; or

4. ~~hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012; or~~all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

5. ~~pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:~~

~~_____ a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by March 1, 2014;~~

~~_____ b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;~~

~~_____ c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and~~

~~_____ d. became licensed as a PDHC by the department no later than December 31, 2014;~~

~~_____ 6. behavioral health services providers that are licensed to provide PSR and/or CPST, or that have submitted a completed application for licensure as a BHS provider that includes PSR and/or CPST, prior to promulgation of this Rule; and~~

~~_____ 7. behavioral health services (BHS) providers that fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, that submit a completed BHS provider licensing application by December 1, 2017 and become licensed by April 1, 2018.~~ 5. - 7. Repealed.

H. ~~Exemptions from the facility need review process~~
Additional Grandfather Provision. An approval shall be made
for deemed to have been granted under FNR without review for HCBS
providers, ICFs/DD, ADHC providers, hospice providers, BHS
providers, and pediatric day health care centers and HOEDs
that meet one of the following conditions:

- ~~1. a nursing facility which needs to be replaced as~~

~~a result of destruction by fire or a natural disaster, such as a hurricane~~HCBS providers which were licensed by January 31, 2009 or had a completed initial licensing application submitted to the department by June 30, 2008; ~~or~~

2. ~~a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.~~existing licensed ICFs/DD that are converting to the Residential Options Waiver;

3. ADHC providers who were licensed as of December 31, 2009 or who had a completed initial licensing application submitted to the department by December 31, 2009, or who are enrolled or will enroll in the Louisiana Medicaid Program solely as a program for all-inclusive care for the elderly provider;

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012; or

5. pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:

a. has a building site or plan review approval for a PDHC facility from the Office of the State Fire Marshal by March 1, 2014;

b. began construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a

licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;

c. submitted a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and

d. became licensed as a PDHC by the department no later than December 31, 2014;

6. behavioral health services providers that are licensed to provide PSR and/or CPST, or that have submitted a completed application for licensure as a BHS provider that includes PSR and/or CPST, prior to promulgation of this Rule;

7. behavioral health services (BHS) providers that fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, that submitted a completed BHS provider licensing application by December 1, 2017 and became licensed by April 1, 2018; and

8. Hospital Off-Site Emergency Department (HOED)

a. a healthcare facility providing emergency services at an off-site campus of a licensed hospital, provided that the hospital and such off-site location were licensed by

the Department and operational prior to the effective date of this Rule; or

b. a healthcare facility that intends to provide emergency services at an off-site campus of a licensed hospital provided that all of the following are met:

i. the licensed hospital had achieved vertical construction of the off-site location by the effective date of this Rule; vertical construction shall exist when the entire foundation slab has been poured and vertical framing of the facility has begun; and

ii. the licensing application shall include a written attestation signed by the architect who prepared the architectural drawings and/or building plans for the off-site campus, wherein the architect certifies that per an on-site inspection, the off-site campus had reached vertical construction, as defined above, by the effective date of this Rule; and

iii. the off-site campus is licensed by the department and operational within 12 months of the effective date of this Rule. An extension may be granted at the discretion of the department for good cause shown.

I. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as

a result of destruction by fire or a natural disaster, such as a hurricane; or

2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 38:1961 (August 2012), LR 41:136 (January 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 44:281 (February 2018), LR 45:

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

§12522. Hospital Off-Site Emergency Departments

A. Subject to the grandfather provisions in this rule, no hospital off-site emergency department (HOED) shall be licensed to operate unless the FNR Program has granted an approval for

the issuance of an HOED license.

B. The department will determine the number of HOEDs to be licensed by the department.

C. Once the FNR Program approval is granted, the HOED is eligible to be licensed by the department, subject to meeting all requirements for licensure.

D. An existing licensed hospital with a licensed off-site emergency department at effective date of promulgation of this rule revision, shall be automatically granted FNR approval in accordance with the grandfather provision described in Section 12503.H of this rule.

E. The service area for a proposed or existing HOED is the parish in which the HOED is to be located.

F. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional HOED in the service area or geographic location for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the HOED is not allowed to be licensed.

3. In reviewing the application, the department may

consider, but is not limited to, evidence showing:

a. the number of other HOEDs in the same service area or geographic location and region servicing the same population; and

b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the HOED is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

G. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application regarding the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed HOEDs shall expire if these aspects of the application are altered or changed.

H. FNR approvals for licensed HOEDs are non-transferrable and are limited to the location and the name of the original licensee.

1. A HOED undergoing a change of location in the same licensed service area shall submit a written attestation of the change of location and the department shall re-issue the FNR

approval with the name and new location. A HOED undergoing a change of location outside of the licensed region shall submit a new FNR application and fee and undergo the FNR approval process.

2. An HOED undergoing a change of ownership shall submit a new application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR approval of a licensed HOED shall automatically expire if the HOED is moved or transferred to another party, entity or location without application to and approval by the FNR program.

I. FNR-approved HOED 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 HOED.

AUTHORITY NOTE: Promulgated in accordance with R.S.

36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:

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.

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.

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. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on August 29, 2019.

The department will conduct a public hearing at 9:30 a.m. on August 29, 2019 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