

**NOTICE OF INTENT**

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

**Nursing Facilities  
Licensing Standards  
(LAC 48:I.9769 and 9771)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 48:I.9769 and §9771 as authorized by R.S. 36:254 and 40:2009.1-2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Acts 18 and 30 of the 2020 Second Extraordinary Session of the Louisiana Legislature directed the Department of Health to promulgate rules that provide minimum standards in relation to the requirements for licensed nursing facilities to allow visitation of members of the clergy and immediate family members or other designated persons during a public health emergency (PHE) declared in accordance with R.S. 29:760 et seq. and to mitigate the transmission of any infectious agent or disease. In compliance with Acts 18 and 30, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities in order to establish minimum requirements and limitations for visitation by clergy and immediate family members or other designated persons during a declared PHE.

Title 48

PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 3. Licensing

Chapter 97. Nursing Facilities

Subchapter B. Organization and General Services

§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.

B. For purposes of §9769 and §9771, clergy shall be defined as follows:

1. a minister, priest, preacher, rabbi, imam, Christian Science practitioner; or
2. other similar functionary of a religious organization; or
3. an individual reasonably believed to be such a clergy member by the person consulting him/her.

C. For purposes of §9769 and §9771, immediate family member shall mean the following of a resident in a nursing facility:

1. spouse;
2. natural or adoptive parent, child, or sibling;

3. stepparent, stepchild, stepbrother, or stepsister;
4. father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law;
5. grandparent or grandchild;
6. spouse of a grandparent or grandchild; or
7. legal or designated representative of the resident.

D. For purposes of §9769 and §9771, resident shall mean a resident of a licensed nursing facility in Louisiana or the legal or designated representative of the resident.

E. A licensed nursing facility shall comply with any federal law, regulation, requirement, order, or guideline regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency. The provisions of the licensing rules in §9769.F-I shall be preempted by any federal statute, regulation, requirement, order, or guideline from a federal government agency that requires a nursing facility to restrict resident visitation in a manner that is more restrictive than the rules.

F. Nursing facilities shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in nursing facilities during a declared PHE.

G. Nursing facilities shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in a nursing facility during a declared PHE.

H. The provisions of this Section regarding visitation by members of the clergy shall apply to all nursing facilities licensed by the Department of Health.

I. Subject to the requirements of §9767.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. Each nursing facility shall have a written policy and procedure addressing visitation by members of the clergy. A copy of the written policy and procedure shall be available, without cost, to the resident and his legal or designated representative, upon request. The nursing facility shall provide a link to an electronic copy of the policy and procedure to a member of the clergy, upon request.

2. A nursing facility's policy and procedure regarding clergy visitation may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the nursing facility, in consultation with

appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical considerations of an individual resident.

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

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

b. that a clergy member will 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 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 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 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. that a nursing facility's policy and procedure include provisions for compliance with any Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE; and

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:

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

A. A licensed nursing facility shall comply with any federal law, regulation, requirement, order, or guideline regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency. The provisions of the licensing rules in §9771.B-E shall be preempted by any federal statute, regulation, requirement, order, or guideline from a federal government agency that requires a nursing facility to restrict resident visitation in a manner that is more restrictive than the rules.

B. Nursing facilities shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in nursing facilities during a declared PHE.

C. Nursing facilities shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in a nursing facility during a declared PHE.

D. The provisions of this Section regarding visitation by immediate family members of the resident and other designated persons shall apply to all nursing facilities licensed by the Department of Health.

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. Each nursing facility shall have a written policy and procedure addressing visitation by immediate family members and other designated persons. A copy of the written policy and procedure shall be available, without cost, to the resident and his legal or designated representative, upon request. The nursing facility shall provide a link to an electronic copy of the policy and procedure to immediate family members and other designated persons, upon request.

2. A nursing facility's policy and procedure regarding visitation by immediate family members and other designated persons may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the nursing facility, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical considerations of an individual resident.

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

a. that the nursing facility 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 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 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 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 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. that a nursing facility's policy and procedure include provisions for compliance with any Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.1-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:

**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 allowing clergy and immediate family members, or other designated persons of a nursing facility resident to visit during a declared public health emergency.

**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 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 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 July 30, 2021.

### **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 July 12, 2021. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on July 29, 2021 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 July 12, 2021. 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. In the event of a hearing, 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.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: Veronica Dent Dept.: Health

Phone: 342-3238 Office: Bureau of Health Services Financing

Return  
Address: P.O. Box 91030 Rule  
Title: Nursing Facilities  
Baton Rouge, LA Licensing Standards

Date Rule  
Takes Effect: September 20, 2021

SUMMARY  
(Use complete sentences)

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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND 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 implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 20-21. It is anticipated that \$1,404 will be expended in FY 20-21 for the state's administrative expense for 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 have no effect on 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, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

In compliance with Acts 18 and 30 of the 2020 Second Extraordinary Session, this proposed Rule amends the provisions governing the licensing of nursing facilities in order to establish minimum requirements and limitations for visitation by clergy and immediate family members or other designated persons during a declared public health emergency (PHE). This proposed Rule will be beneficial to nursing facility residents by allowing visits by family and clergy during a PHE. It is anticipated that implementation of this proposed Rule will not result in costs to nursing facilities in FY 20-21, FY 21-22, and FY 22-23, but will be beneficial by establishing standards for visitation during a PHE.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

  
Signature of Agency Head or Designee

Tasheka Dukes, RN  
Deputy Assistant Secretary,  
LDH Health Standards Section  
Typed Name & Title of Agency Head or Designee

06-04-21  
Date of Signature

  
Legislative Fiscal Officer or Designee

6/9/21  
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 deliberation 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).

In compliance with Acts 18 and 30 of the 2020 Second Extraordinary Session, this proposed Rule amends the provisions governing the licensing of nursing facilities in order to establish minimum requirements and limitations for visitation by clergy and immediate family members or other designated persons during a declared public health emergency (PHE).

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

Acts 18 and 30 of the 2020 Second Extraordinary Session of the Louisiana Legislature directed the Department of Health to promulgate rules that provide minimum standards in relation to the requirements for licensed nursing facilities to allow visitation of members of the clergy and immediate family members or other designated persons during a public health emergency (PHE) declared in accordance with R.S. 29:760 et seq. and to mitigate the transmission of any infectious agent or disease. In compliance with Acts 18 and 30, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities in order to establish minimum requirements and limitations for visitation by clergy and immediate family members or other designated persons during a declared PHE.

- 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 implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 20-21. In FY 20-21, \$1,404 is included for the state's administrative expense for 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) \_\_\_\_\_ Yes. If yes, attach documentation.

(b) \_\_\_\_\_ NO. If no, provide justification as to why this rule change should be published at this time

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

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

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

COSTS	FY 21	FY 22	FY 23
Personal Services			
Operating Expenses	\$1,404	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
<b>TOTAL</b>	<b>\$1,404</b>	<b>\$0</b>	<b>\$0</b>
<b>POSITIONS (#)</b>			

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 20-21, \$1,404 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 21	FY 22	FY 23
State General Fund	\$1,404	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds			
Other (Specify)			
<b>TOTAL</b>	<b>\$1,404</b>	<b>\$0</b>	<b>\$0</b>

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 THE ACTION PROPOSED

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

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

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

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

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

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

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

REVENUE INCREASE/DECREASE	FY 21	FY 22	FY 23
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds			
Local Funds			
<b>TOTAL</b>			

\*Specify the particular fund being impacted.

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

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

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

In compliance with Acts 18 and 30 of the 2020 Second Extraordinary Session, this proposed Rule amends the provisions governing the licensing of nursing facilities in order to establish minimum requirements and limitations for visitation by clergy and immediate family members or other designated persons during a declared public health emergency (PHE). This proposed Rule will be beneficial to nursing facility residents by allowing visits by family and clergy during a PHE.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed Rule will not result in costs to nursing facilities in FY 20-21, FY 21-22, and FY 22-23, but will be beneficial by establishing standards for visitation during a PHE.

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.