

NOTICE OF INTENT

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

**Home and Community-Based Services Providers
Licensing Standards
(LAC 48:I.5038)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 48:I.5038 as authorized by R.S. 36:254 and R.S. 40:2120.2. 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 promulgated an Emergency Rule which amended the provisions governing the licensing standards for home and community-based services (HCBS) providers in order to adopt provisions to allow licensed HCBS providers to operate and provide services outside of their licensed geographic areas to existing clients who have evacuated or temporarily relocated to another location in the state due to a gubernatorial declared state of emergency or disaster in Louisiana (*Louisiana Register*, Volume 46, Number 10). This proposed Rule is being promulgated in order to continue the provisions of the September 21, 2020 Emergency Rule.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 50. Home and Community-Based Services Providers

Licensing Standards

Subchapter C. Admission, Transfer and Discharge Criteria

§5038. Provisions for Services to Clients Outside of Licensed Geographic Area in Event of a Gubernatorial Declared State of Emergency or Disaster

A. To ensure the health and safety of clients, and the coordination and continuation of services to clients, during a gubernatorial declared state of emergency or disaster in Louisiana, the department, through written notice sent electronically to licensed HCBS providers, may allow a licensed HCBS provider to operate and provide services to existing clients who are receiving personal care services and respite services and who have evacuated or temporarily relocated to another location in the state when the following apply:

1. the client has evacuated or temporarily relocated to a location outside of the provider's licensed region due to the declared state of emergency or disaster;

2. the client shall have been a client of the HCBS provider as of the date of the declared emergency or disaster, with an approved plan of care;

3. the client's existing caregiver(s) go with the client or provide services to the client at the client's temporary location;

4. the provider is responsible for ensuring that all essential care and services, in accordance with the plan of care, are provided to the client, and the provider shall have sufficient staff and back-up caregivers available to provide services; and

5. the provider shall not interfere with the client's right to choose a provider of his/her choice if the client elects a new HCBS provider in the area where the client relocates. The provider shall facilitate client's selection.

B. The provisions of this Section shall not apply to providers of center based respite services.

C. To ensure the health and safety of clients, and the coordination and continuation of services to clients, during a gubernatorial declared state of emergency or disaster in Louisiana, the department, through written notice sent electronically to licensed HCBS providers, may allow a licensed HCBS provider to operate and provide services to existing clients who are receiving supervised independent living services (SIL) and who have evacuated or temporarily relocated to another location in the state when the following apply:

1. the client has evacuated or temporarily relocated to a location outside of the provider's licensed region due to the declared state of emergency or disaster;

2. the client shall have been a client of the HCBS provider as of the declared state of emergency or disaster, with an approved plan of care;

3. the provider has sufficient and qualified staff to provide SIL services at the client's temporary location;

4. the provider is responsible for ensuring that all essential SIL services, in accordance with the plan of care, are provided to the client; and

5. the provider shall not interfere with the client's right to choose a provider of his/her choice if the client elects a new HCBS provider in the area where the client relocates. The provider shall facilitate client's selection.

D. Under the provisions of this Section, the department's initial written notice to licensed HCBS providers to authorize these allowances shall be for a period not to exceed 45 days. The department may extend this initial period, not to exceed an additional 45 days, upon written notice sent electronically to the licensed HCBS providers.

E. Under the provisions of this Section, the department in its discretion may authorize these allowances statewide or to certain affected parishes.

F. An HCBS provider who wants to provide services to a client that has temporarily relocated out of state must contact that state's licensing/certification department to obtain any

necessary licensing and/or certification before providing services in that state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, 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 assuring continued access to home and community-based services during a declared emergency or disaster.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by assuring continued access to home and community-based services during a declared emergency or disaster.

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 may have a positive impact on small businesses, as described in R.S. 49:965.2 et seq. as it will allow them to continue to provide home and community-based services during a declared emergency or disaster.

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, and will have a positive impact on the provider's ability to provide the same level of service during a declared emergency or disaster 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 November 29, 2020.

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 November 9, 2020. 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 November 24, 2020 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 November 9 2020. 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