



**State of Louisiana**  
Louisiana Department of Health  
Office of the Secretary

September 9, 2019

**Via Statutorily Prescribed Email**

**To:** The Honorable Fred H. Mills, Jr. Chairman, Senate Health & Welfare Committee  
The Honorable Frank A. Hoffmann, Chairman, House Health & Welfare Committee

**From:** Rebekah E. Gee, MD, MPH  
Secretary

*By Cindy Rivers for*

**Re:** Second Report on Proposed Amendments to LAC 48:I.Chapter 93 –  
Hospital Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Hospital Licensing Standards rule amendment.

A Notice of Intent on the proposed amendments was published in the April 20, 2019 issue of the *Louisiana Register* (LR 45:610). A public hearing was held on May 30, 2019, written comments and oral testimony were received during the public hearing. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted. However, an editorial oversight occurred when submitting section 9301(C) of the NOI to the *Louisiana Register* that failed to align the proposed amendments with the rest of Chapter 93.

Unless otherwise directed, the Department anticipates adopting the April 20, 2019, Notice of Intent when it is published as a final rule in the October 20, 2019, issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. a copy of the Notice of Intent with technical revisions;
3. the public hearing certification;
4. the public hearing attendance roster;
5. summary of public hearing testimony;
6. summary of written comments; and
7. copies of response letters from the agency to submitted comments.

Should you have any questions or need additional information, please contact Cecile Castello, LDH Assistant Deputy Secretary, at [cecile.castello@la.gov](mailto:cecile.castello@la.gov).

Cc: Cecile Castello, Assistant Deputy Secretary, Louisiana Department of Health  
Jen Katzman, Deputy Medicaid Director  
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers  
Anita Dupuy, Legislative Liaison, Louisiana Department of Health  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

#### **Hospital Licensing Standards (LAC 48:I.Chapter 93)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 as authorized by R.S. 36:254 and R.S. 40:2100-2115. 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 licensing of hospitals in order to clarify the requirements that licensed hospitals shall: 1) be primarily engaged in providing inpatient care and services to inpatients, and 2) ensure that dietary services provided through a contract with a food delivery service meet the same standards as hospitals that provide in-house dietary services to patients.

#### **Title 48 PUBLIC HEALTH-GENERAL Part I. General Administration Subpart 3. Licensing**

#### **Chapter 93. Hospitals**

#### **Subchapter A. General Provisions**

#### **§9301. Purpose**

- A. The purpose of the hospital laws, rules and ~~standards~~

regulations is to provide for the development, establishment and enforcement of standards for the care of individuals in hospitals and for the construction, maintenance and operation of hospitals which shall promote safe and adequate treatment of individuals in hospitals.

~~1. Except as otherwise provided herein, hospitals shall provide directly or under arrangements the following professional departments, services, facilities and functions:~~

- ~~a. organization and general services;~~
- ~~b. nursing services;~~
- ~~c. pharmaceutical services;~~
- ~~d. radiological services;~~
- ~~e. laboratory services;~~
- ~~f. food and dietetic services;~~
- ~~g. medical record services;~~
- ~~h. quality assessment and improvement;~~
- ~~i. physical environment;~~
- ~~j. infection control;~~
- ~~k. respiratory care services.~~

~~2. Except as otherwise provided herein, hospitals may provide the following optional services directly or under arrangements:~~

- ~~a. surgical services;~~

- ~~b. anesthesia services;~~
- ~~c. nuclear medicine services;~~
- ~~d. outpatient services;~~
- ~~e. rehabilitation services;~~
- ~~f. psychiatric services;~~
- ~~g. obstetrical and newborn services;~~
- ~~h. pediatric services;~~
- ~~i. emergency services.~~ 1. - 2.i. Repealed.

B. A hospital shall be licensed in accordance with state law, rules and regulations adopted and established by the state agency responsible for the licensing of hospitals.

C. Primarily Engaged

1. Hospitals shall be primarily engaged, as defined by this Rule and determined by the Department of Health, in providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

2. Licensed hospitals designated as psychiatric hospitals and critical access hospitals as defined by the Code of Federal Regulations, and licensed hospitals designated as rural hospitals as defined by R.S. 40:1189.3, are not subject to the primarily engaged requirements.

3. In reaching a determination as to whether or not an entity is primarily engaged in providing inpatient hospital services to inpatients of a hospital, the Department of Health will evaluate the total facility operations and consider multiple factors, subject to paragraph C.4 below.

a. Total Facility Operations. In evaluating the total facility operations, the department will review the actual provision of care and services to two or more inpatients, and the effects of that care, to assess whether the care provided meets the needs of individual patients by way of patient outcomes.

b. Multiple Factors. The factors that the department will consider include, but are not limited to:

i. the entity's average daily census (ADC);

ii. the average length of stay (ALOS);

iii. the number of off-site campus outpatient locations operated by the entity;



iv. the number of provider-based emergency departments for the entity;

v. the number of inpatient beds related to the size of the entity and the scope of the services offered;

vi. the volume of outpatient surgical procedures compared to the inpatient surgical procedures (if surgical services are provided);

vii. staffing patterns; and

viii. patterns of ADC by day of the week.

4. Notwithstanding any other provision of this rule, an entity shall not be considered to be primarily engaged in providing inpatient hospital services to inpatients of a hospital if it has an ADC of less than two, or an average length of stay of less than two.

5. Hospitals are not required to have a specific inpatient bed to outpatient bed ratio in order to meet the definition of primarily engaged.

a. If the hospital has an emergency department (ED), the number of hospital inpatient beds shall be greater than the number of ED beds, with a ratio of not less than 2:1.

D. Except as otherwise provided herein, hospitals shall provide directly or under arrangements the following professional departments, services, facilities and functions

which are essential to establish whether a facility is primarily engaged in providing inpatient hospital services:

1. organization and general services:
2. nursing services;
3. pharmaceutical services;
4. radiological services;
5. laboratory services;
6. nutritional and therapeutic dietetic services;
7. medical record services;
8. quality assessment and improvement;
9. physical environment;
10. infection control;
11. respiratory care services.

E. Except as otherwise provided herein, hospitals may provide the following optional services directly or under arrangements:

1. surgical services;
2. anesthesia services;
3. nuclear medicine services;
4. outpatient services;
5. rehabilitation services;
6. psychiatric services;
7. obstetrical and newborn services;



8. pediatric services;

9. emergency services.

AUTHORITY NOTE: Promulgated in accordance with  
R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Human Resources, Office of the Secretary, LR 13:246 (April  
1987), amended by the Department of Health and Hospitals, Office  
of the Secretary, Bureau of Health Services Financing, LR 21:177  
(February 1995), LR 29:2399 (November 2003), amended by the  
Department of Health, Bureau of Health Services Financing, LR  
45:

**§9303. Definitions**

A. ...

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Average Daily Census (ADC)-calculated by adding the  
midnight daily census for each day of the 12-month period and  
dividing the total number by the number of days in the year. In  
calculating the ADC for purposes of determining whether an  
entity meets the requirements of primarily engaged, LDH may  
utilize a period of between three months and 12 months.

Average Length of Stay (ALOS)-the average of the  
number of inpatient days a person is in the hospital. ALOS is  
calculated by dividing the total inpatient days by the total

discharges during a specified period of time, which results in an average number of days in the hospital for each person admitted. In calculating ALOS, LDH may utilize a period of between three months and 12 months.

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~~Department-Louisiana Department of Health-and Hospitals.~~

Food Delivery Services-the transportation of the nutritional and therapeutic dietetic services by a food management company that is delivered to the hospital and served to the patients of the hospital.

Food Management Company-an off-site vendor who provides nutritional and therapeutic dietetic services to the hospital through a contractual agreement and that is required to meet the same standards for food and dietetic services as provided by the hospital directly.

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~~Hospital-any institution, place, building, or agency, public or private, whether for profit or not, maintaining and operating facilities, 24 hours a day, seven days a week, having a minimum of 10 licensed beds, -or more, properly staffed and equipped for the diagnosis, treatment and care of persons admitted for overnight stay or longer who are suffering from~~

~~illness, injury, infirmity or deformity or other physical or mental condition for which medical, surgical and/or obstetrical services would be available and appropriate~~ having staff and equipment sufficient to meet patient needs, and providing hospital services, care and treatment for injured, disabled or sick persons who are admitted with the expectation that he or she will require hospital care that is expected to span at least two midnights. Except as otherwise noted in these licensing regulations, a hospital shall be primarily engaged in providing inpatient services to inpatients, by or under the supervision of licensed physicians. ~~This~~ The term hospital does not include the following:

a. - b. ...

c. persons, schools, institutions, or organizations engaged in the care and treatment of ~~the mentally retarded~~ children with intellectual disabilities and which are required to be licensed by the provisions of the Developmental Disability Law, R.S. 28:421-427~~28:451.1~~ et seq.;

d. - e. ...

f. infirmaries or clinics maintained solely by any college or university exclusively for treatment of faculty, students and employees-; or

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g. an urgent care clinic.

NOTE: Free standing emergency departments (or an entity that holds itself out to the public mainly as a free standing emergency department) shall not be licensed as a hospital.

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Inpatient-a person who admitted to a hospital with the status of inpatient for purposes of receiving hospital services with the expectation that he/she will require hospital care expected to span at least two nights and occupy a bed even though it is later determined that the patient can be discharged or transferred to another hospital and not actually use a hospital bed overnight. Persons in hospital observation status are not inpatients.

Inpatient Hospital Services or Inpatient Service-  
includes, but is not limited to, the following services provided to inpatients of the hospital as either: diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

a. bed and board;

b. 24-hour nursing services and other related services;

- c. use of hospital facilities;
- d. medical social services;
- e. drugs, biologicals, supplies, appliances, and equipment;
- f. certain other diagnostic or therapeutic services;
- g. medical or surgical services provided by certain interns or residents-in-training; and
- h. transportation services, including transport by ambulance.

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*Licensed Practical Nurse (LPN)* ~~any~~ any person licensed to practice practical nursing ~~and who is licensed to practice~~ by the Louisiana State Board of Practical Nurse Examiners and is practicing within his/her scope of practice, training, experience, and competency.

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Nutritional and Therapeutic Dietetic Services-the provision of a nourishing, palatable, well-balanced diet that meets the patient's daily nutritional and special dietary needs in accordance with the licensed practitioner's prescribed plan of care, and taking into consideration the preferences of each patient.

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Office of the Secretary—office of the person serving  
as the Secretary of the Department of Health ~~and Hospitals~~.

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Primarily Engaged—a hospital is directly providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Note: Having the capacity or potential to provide inpatient hospital services is not the equivalent of actually providing such care.

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AUTHORITY NOTE: Promulgated in accordance with  
R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Hospitals, Office of the Secretary, Bureau of Health  
Services Financing, LR 21:177 (February 1995), LR 29:2400  
(November 2003), amended by the Department of Health and  
Hospitals, Bureau of Health Services Financing, LR 36:513 (March



2010), LR 37:3028 (October 2011), LR 38:1413 (June 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**Subchapter G. ~~Food~~Nutritional and Therapeutic Dietetic Services**  
**§9377. General Provisions**

A. There shall be an organized dietary service that provides nutritional ~~care~~and therapeutic dietetic services to patients. All hospital contracts or arrangements for off-site food preparation shall be with a provider who is licensed by the department's healthcare division or operating under the authority of the federal government.

B. ...

1. The hospital ~~must~~shall provide written notices to the department's Health Standards Section and to the department's Office of Public Health within 10 calendar days of the effective date of the contract.

2. The outside food management company must possess a valid Department of Health~~and Hospitals~~, Office of Public Health retail food permit and meet all of the requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the most current version of the provisions found in Title 51, ~~Part XXIII, Chapter 19, §1911~~Public Health-Sanitary Code.

3. Either the hospital or the food management company ~~must~~ shall employ or contract with a registered dietitian who serves the hospital on a full-time, part-time, or consultant basis to ensure that the nutritional needs of the patients are met in accordance with the licensed practitioners' orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1413 (June 2012, amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§9379. Organization and Staffing**

A. ~~Food~~ Nutritional and therapeutic dietetic services shall be under the supervision of a registered dietitian, licensed to practice in Louisiana, who is employed either full time, part time or on a consulting basis. If the registered dietitian is not full time, there shall be a full time dietary manager.

B. - B.4.a. ...

C. The registered dietitian shall be responsible for assuring that quality nutritional ~~care is~~ and therapeutic dietetic services are provided to patients. This shall be accomplished by providing and supervising the nutritional aspects of patient care including nutritional screening, nutritional assessments of patients at nutritional risk, patient education related to nutritional intake and diet therapy, and recording information in the medical record regarding the nutritional status and care of the patient and the patient's response to the therapeutic diet.

D. The hospital shall employ sufficient support personnel, competent in their respective duties, to carry out the function of the dietary service adequate to meet the nutritional and therapeutic dietetic needs of the patients in accordance with the prescribed plan of care.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§9383. Sanitary Conditions**

A. ...

B. All food shall be transported, stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 41~~EF~~ degrees Fahrenheit, except when being prepared and served. Refrigerator temperatures shall be maintained at 41~~EF~~ degrees Fahrenheit or below, freezers at 0~~EF~~ degrees Fahrenheit or below.

1. For those hospitals that contract with a food delivery service for nutritional and therapeutic dietary services, food shall be transported only via vehicles designed, equipped, and maintained solely for the purpose of the transportation and delivery of food by the food management company.

C. Hot foods shall leave the kitchen or steam table at or above 140~~EF~~ degrees Fahrenheit, and cold foods at or below 41~~EF~~ degrees Fahrenheit. In-room delivery temperatures shall be maintained at 120~~EF~~ degrees Fahrenheit or above for hot foods and 50~~EF~~ degrees Fahrenheit or below for cold items, except for milk which shall be stored at 41~~EF~~ degrees Fahrenheit. Food shall be transported to the patients' rooms in a manner that protects it from contamination, while maintaining required

temperatures.

1. For those hospitals who contract with a food management company for nutritional and therapeutic dietary services, transportation and delivery of such food shall be transported and served in accordance with §9383.A-C.

D. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes maintaining a water temperature in dish washing machines at 140~~EF~~ degrees Fahrenheit during the wash cycle (or according to the manufacturer's specifications or instructions) and 180~~EF~~ degrees Fahrenheit for the final rinse. Low temperature machines shall maintain a water temperature of 120~~EF~~ degrees Fahrenheit with 50 parts per million (ppm) of hypochlorite (household bleach) on dish surfaces. For manual washing in a 3 compartment sink, a wash water temperature of 75~~EF~~ degrees Fahrenheit with 50 ppm of hypochlorite or equivalent, or 12.5 ppm of iodine; or a hot water immersion at 170~~EF~~ degrees Fahrenheit for at least 30 seconds shall be maintained. An approved lavatory shall be convenient and equipped with hot and cold water tempered by means of a mixing valve or combination faucet for dietary services staff use. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least 15 seconds without the

need to reactivate the faucet. Effective with the promulgation of these requirements, an additional lavatory shall be provided in the dishwasher area in newly constructed hospitals or in existing hospitals undergoing major dietary alterations.

1. For those hospitals that contract nutritional and therapeutic dietary services, such shall be conducted in accordance with the State Sanitary Code for the preparing, cleaning, sanitation, and storage of equipment and utensils.

E. - H. ...

I. The physical environment in which all food preparation takes place shall be kept clean and in ~~good repair~~ operating condition.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2414 (November 2003), amended 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 a positive effect on the stability of



the family as described in R.S. 49:972 by ensuring a safe and effective operation of licensed hospitals.

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 May 30, 2019.

The department will conduct a public hearing at 9:30 a.m. on May 30, 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

## **NOTICE OF INTENT**

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

#### **Hospital Licensing Standards (LAC 48:I.Chapter 93)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 as authorized by R.S. 36:254 and R.S. 40:2100-2115. 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 licensing of hospitals in order to clarify the requirements that licensed hospitals shall: 1) be primarily engaged in providing inpatient care and services to inpatients, and 2) ensure that dietary services provided through a contract with a food delivery service meet the same standards as hospitals that provide in-house dietary services to patients.

#### **Title 48 PUBLIC HEALTH-GENERAL Part I. General Administration Subpart 3. Licensing**

#### **Chapter 93. Hospitals**

#### **Subchapter A. General Provisions**

#### **§9301. Purpose**

- A. The purpose of the hospital laws, rules and

regulations is to provide for the development, establishment and enforcement of standards for the care of individuals in hospitals and for the construction, maintenance and operation of hospitals which shall promote safe and adequate treatment of individuals in hospitals.

1. - 2.i. Repealed.

B. A hospital shall be licensed in accordance with state law, rules and regulations adopted and established by the state agency responsible for the licensing of hospitals.

C. Primarily Engaged

1. Hospitals shall be primarily engaged, as defined by this Rule and determined by the Department of Health, in providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

2. Licensed hospitals designated as psychiatric hospitals and critical access hospitals as defined by the Code

of Federal Regulations, and licensed hospitals designated as rural hospitals as defined by R.S. 40:1189.3, are not subject to the primarily engaged requirements.

3. In reaching a determination as to whether or not an entity is primarily engaged in providing inpatient hospital services to inpatients of a hospital, the Department of Health will evaluate the total facility operations and consider multiple factors, subject to paragraph C.4 below.

a. Total Facility Operations. In evaluating the total facility operations, the department will review the actual provision of care and services to two or more inpatients, and the effects of that care, to assess whether the care provided meets the needs of individual patients by way of patient outcomes.

b. Multiple Factors. The factors that the department will consider include, but are not limited to:

i. the ~~entity's~~ average daily census (ADC) of the main hospital and/or any off-site campus(es);

ii. the average length of stay (ALOS) of patients at the main hospital and/or any off-site campus(es);

iii. the number of off-site campus outpatient locations operated by the entity;

iv. the number of provider-based emergency

departments for the entity;

v. the number of inpatient beds related to the size of the entity and the scope of the services offered;

vi. the volume of outpatient surgical procedures compared to the inpatient surgical procedures (if surgical services are provided);

vii. staffing patterns; and

viii. patterns of ADC by day of the week.

4. Notwithstanding any other provision of this rule, an entity shall not be considered to be primarily engaged in providing inpatient hospital services to inpatients of a hospital if ~~it~~ a main hospital or a main hospital's off-site campus(es) has an ADC of less than two, or an average length of stay of less than two. For purposes of determining whether a main hospital and its off-site campus(es) are primarily engaged, the ADC and the average length of stay shall be made independently for each entity.

5. Hospitals are not required to have a specific inpatient bed to outpatient bed ratio in order to meet the definition of primarily engaged.

a. If the hospital has an emergency department (ED), the number of hospital inpatient beds shall be greater than the number of ED beds, with a ratio of not less than 2:1.



D. Except as otherwise provided herein, hospitals shall provide directly or under arrangements the following professional departments, services, facilities and functions which are essential to establish whether a facility is primarily engaged in providing inpatient hospital services:

1. organization and general services;
2. nursing services;
3. pharmaceutical services;
4. radiological services;
5. laboratory services;
6. nutritional and therapeutic dietetic services;
7. medical record services;
8. quality assessment and improvement;
9. physical environment;
10. infection control;
11. respiratory care services.

E. Except as otherwise provided herein, hospitals may provide the following optional services directly or under arrangements:

1. surgical services;
2. anesthesia services;
3. nuclear medicine services;
4. outpatient services;

5. rehabilitation services;
6. psychiatric services;
7. obstetrical and newborn services;
8. pediatric services;
9. emergency services.

AUTHORITY NOTE: Promulgated in accordance with  
R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Human Resources, Office of the Secretary, LR 13:246 (April  
1987), amended by the Department of Health and Hospitals, Office  
of the Secretary, Bureau of Health Services Financing, LR 21:177  
(February 1995), LR 29:2399 (November 2003), amended by the  
Department of Health, Bureau of Health Services Financing, LR  
45:

**§9303. Definitions**

A. ...

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*Average Daily Census (ADC)*-calculated by adding the  
midnight daily census of the main hospital or its off-site  
campus(es), independent of one another, for each day of the 12-  
month period and dividing the total number by the number of days  
in the year. In calculating the ADC for purposes of determining  
whether an entity meets the requirements of primarily engaged,

LDH may utilize a period of between three months and 12 months.

*Average Length of Stay (ALOS)*-the average of the number of inpatient days a person is in the main hospital or its off-site campus(es). ALOS is calculated by dividing the total inpatient days by the total discharges during a specified period of time, which results in an average number of days in the main hospital or its off-site campus(es) for each person admitted. In calculating ALOS, LDH may utilize a period of between three months and 12 months. For purposes of calculating the ALOS of the main hospital or its off-site campus(es), each facility shall be considered an independent entity.

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*Department-Louisiana Department of Health.*

*Food Delivery Services*-the transportation of the nutritional and therapeutic dietetic services by a food management company that is delivered to the hospital and served to the patients of the hospital.

*Food Management Company*-an off-site vendor who provides nutritional and therapeutic dietetic services to the hospital through a contractual agreement and that is required to meet the same standards for food and dietetic services as provided by the hospital directly.

\*\*\*

*Hospital*-any institution, place, building, or agency, public or private, whether for profit or not, maintaining and operating facilities, 24 hours a day, seven days a week, having a minimum of 10 licensed beds, having staff and equipment sufficient to meet patient needs, and providing hospital services, care and treatment for injured, disabled or sick persons who are admitted with the expectation that he or she will require hospital care that is expected to span at least two midnights. Except as otherwise noted in these licensing regulations, a hospital shall be primarily engaged in providing inpatient services to inpatients, by or under the supervision of licensed physicians. The term hospital does not include the following:

a. - b. ...

c. persons, schools, institutions, or organizations engaged in the care and treatment of children with intellectual disabilities and which are required to be licensed by the provisions of the Developmental Disability Law, R.S. 28:451.1 et seq.;

d. - e. ...

f. infirmaries or clinics maintained solely by any college or university exclusively for treatment of faculty, students and employees; or

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g. an urgent care clinic.

NOTE: Free standing emergency departments (or an entity that holds itself out to the public mainly as a free standing emergency department) shall not be licensed as a hospital.

\*\*\*

*Inpatient*-a person who admitted to a hospital with the status of inpatient for purposes of receiving hospital services with the expectation that he/she will require hospital care expected to span at least two nights and occupy a bed even though it is later determined that the patient can be discharged or transferred to another hospital and not actually use a hospital bed overnight. Persons in hospital observation status are not inpatients.

*Inpatient Hospital Services or Inpatient Service*-includes, but is not limited to, the following services provided to inpatients of the hospital as either: diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

- a. bed and board;
- b. 24-hour nursing services and other related

services;

- c. use of hospital facilities;
- d. medical social services;
- e. drugs, biologicals, supplies, appliances, and

equipment;

- f. certain other diagnostic or therapeutic services;
- g. medical or surgical services provided by certain

interns or residents-in-training; and

- h. transportation services, including transport by ambulance.

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*Licensed Practical Nurse (LPN)*—a person licensed to practice practical nursing by the Louisiana State Board of Practical Nurse Examiners and is practicing within his/her scope of practice, training, experience, and competency.

\*\*\*

*Nutritional and Therapeutic Dietetic Services*—the provision of a nourishing, palatable, well-balanced diet that meets the patient's daily nutritional and special dietary needs in accordance with the licensed practitioner's prescribed plan of care, and taking into consideration the preferences of each patient.

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*Office of the Secretary*—office of the person serving as the Secretary of the Department of Health.

\*\*\*

*Primarily Engaged*—a hospital is directly providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Note: Having the capacity or potential to provide inpatient hospital services is not the equivalent of actually providing such care.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2400 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:513 (March

2010), LR 37:3028 (October 2011), LR 38:1413 (June 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**Subchapter G. Nutritional and Therapeutic Dietetic Services**

**§9377. General Provisions**

A. There shall be an organized dietary service that provides nutritional and therapeutic dietetic services to patients. All hospital contracts or arrangements for off-site food preparation shall be with a provider who is licensed by the department's healthcare division or operating under the authority of the federal government.

B. ...

1. The hospital shall provide written notices to the department's Health Standards Section and to the department's Office of Public Health within 10 calendar days of the effective date of the contract.

2. The outside food management company must possess a valid Department of Health, Office of Public Health retail food permit and meet all of the requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the most current version of the provisions found in Title 51, *Public Health-Sanitary Code*.

3. Either the hospital or the food management

company shall employ or contract with a registered dietitian who serves the hospital on a full-time, part-time, or consultant basis to ensure that the nutritional needs of the patients are met in accordance with the licensed practitioners' orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1413 (June 2012, amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§9379. Organization and Staffing**

A. Nutritional and therapeutic dietetic services shall be under the supervision of a registered dietitian, licensed to practice in Louisiana, who is employed either full time, part time or on a consulting basis. If the registered dietitian is not full time, there shall be a full time dietary manager.

B. - B.4.a. ...

C. The registered dietitian shall be responsible for assuring that quality nutritional and therapeutic dietetic

services are provided to patients. This shall be accomplished by providing and supervising the nutritional aspects of patient care including nutritional screening, nutritional assessments of patients at nutritional risk, patient education related to nutritional intake and diet therapy, and recording information in the medical record regarding the nutritional status and care of the patient and the patient's response to the therapeutic diet.

D. The hospital shall employ sufficient support personnel, competent in their respective duties, to carry out the function of the dietary service adequate to meet the nutritional and therapeutic dietetic needs of the patients in accordance with the prescribed plan of care.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§9383. Sanitary Conditions**

A. ...

B. All food shall be transported, stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 41 degrees Fahrenheit, except when being prepared and served. Refrigerator temperatures shall be maintained at 41 degrees Fahrenheit or below, freezers at 0degrees Fahrenheit or below.

1. For those hospitals that contract with a food delivery service for nutritional and therapeutic dietary services, food shall be transported only via vehicles designed, equipped, and maintained solely for the purpose of the transportation and delivery of food by the food management company.

C. Hot foods shall leave the kitchen or steam table at or above 140 degrees Fahrenheit, and cold foods at or below 41 degrees Fahrenheit. In-room delivery temperatures shall be maintained at 120 degrees Fahrenheit or above for hot foods and 50 degrees Fahrenheit or below for cold items, except for milk which shall be stored at 41 degrees Fahrenheit. Food shall be transported to the patients' rooms in a manner that protects it from contamination, while maintaining required temperatures.

1. For those hospitals who contract with a food management company for nutritional and therapeutic dietary

services, transportation and delivery of such food shall be transported and served in accordance with §9383.A-C.

D. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes maintaining a water temperature in dish washing machines at 140 degrees Fahrenheit during the wash cycle (or according to the manufacturer's specifications or instructions) and 180 degrees Fahrenheit for the final rinse. Low temperature machines shall maintain a water temperature of 120 degrees Fahrenheit with 50 parts per million (ppm) of hypochlorite (household bleach) on dish surfaces. For manual washing in a 3 compartment sink, a wash water temperature of 75 degrees Fahrenheit with 50 ppm of hypochlorite or equivalent, or 12.5 ppm of iodine; or a hot water immersion at 170 degrees Fahrenheit for at least 30 seconds shall be maintained. An approved lavatory shall be convenient and equipped with hot and cold water tempered by means of a mixing valve or combination faucet for dietary services staff use. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Effective with the promulgation of these requirements, an additional lavatory shall be provided in the dishwasher area in newly constructed hospitals or in existing

hospitals undergoing major dietary alterations.

1. For those hospitals that contract nutritional and therapeutic dietary services, such shall be conducted in accordance with the *State Sanitary Code* for the preparing, cleaning, sanitation, and storage of equipment and utensils.

E. - H. ...

I. The physical environment in which all food preparation takes place shall be kept clean and in operating condition.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2414 (November 2003), amended 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 a positive effect on the stability of the family as described in R.S. 49:972 by ensuring a safe and effective operation of licensed hospitals.

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 May 30, 2019.

The department will conduct a public hearing at 9:30 a.m. on May 30, 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

**John Bel Edwards**  
GOVERNOR



**Rebekah E. Gee MD, MPH**  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

**PUBLIC HEARING CERTIFICATION**  
**May 30, 2019**  
**9:30 a.m.**

**RE: Hospital Licensing Standards**  
**Docket # 05302019-01**  
**Department of Health**  
**State of Louisiana**

**CERTIFICATION**

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on May 30, 2019 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

  
Medicaid Policy and Compliance  
Section

05/30/19  
Date

# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

### PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Devin Jenkins	330 Country Place Stonewall 71078	(318) 243-3800	Specialists Hospital Shreveport
2. Don Barker	4914 Windermere Blvd. Alexandria 71303	(317) 446-6333	Central Louisiana Surgical Hospital
3. Ann Harris	6060 Bluebonnet Btr, La 70810	(225) 406-5501	Surgical Society Center of BR
4. Drakind	625 N. 4th St LDH 3rd	225 342 6096	LDH
5. Lillian Dent	LDH	(225) 342-3238	Medicaid Policy and Compliance
6.			

# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

Name	Address	Telephone Number	AGENCY or GROUP you represent
7. Heather VanLanen	207 Roberts St New Orleans LA 70130	318 444 598	VanLanen Group
8. Kathy Dominguez	1101 Kalise Solomon Rd Lafayette LA 70508	337-769-4203	Lafayette Surgical Specialty Hospital
9. Brenda Stauden	LDH	342-2471	HSS
10. Allen Enger	LDH	342-9037	OPH/ LDH
11. Karen H Barnes	LDH	342-1325	Policy
12. TONYA Joiner (by email)	LDH		LDH

# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

Name	Address	Telephone Number	AGENCY or GROUP you represent
13. Sue Burdick	67259 Lundy Lane Concord, CA 94532	925-801-6246	Amc
14. Brenda Neale	608 East Blume Blvd Marina, CA 94028	985-697-9513	Bay Area Medical
15. Cater Infante		601-382-9082	Physicians Med. Center Houma, LA
16. Brandon Moore	4811 Audubon Dr Lafayette 70508	337- <del>237-8119</del> 237-8119	Park Place Surgical
17. Chris Jones	988 Belknap Blvd Slidell, LA 70458	985-508-8205	Stelling Surg. / Hosp. /
18. Kendi Moore	9485 Dixie Street Rd. Baldwin, LA 71004	318-464-4409	Specialists Hospital Shreveport

# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

Name	Address	Telephone Number	AGENCY or GROUP you represent
19. Caleb Guillory	4811 Ambassador City Lafayette, LA 70508	337-237-8119	Park Place Surgical Hospital
20. Misty Cooper	1508 Leve Ave Shreveport, LA 71101	318 213 3363	Specialists Hospital Shreveport
21. ROBERT BAIR	10105 PARK BURG PATON ROUNDELA 70810	225-906-4805	SPRUE HOSE OF LOUISIANA
22.			
23. Cecile Castello	6280 4 <sup>th</sup> St	342 4997	State of LA
23. Ben Katzman	11		LDH
24. Stacy Schliere		225 - 442-1731	Congressman Graves

# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

Name	Address	Telephone Number	AGENCY or GROUP you represent
25. <i>Lin Hander</i>	<i>9521 Boulevard B.E. 70807</i>	<i>225-928-1026</i>	<i>CHHA</i>
26. <i>Jeanie Smith</i>	<i>48570 S. Airport Rd Hammond, LA 70403</i>	<i>985 510-6146</i>	<i>Cypress Points CHHA</i>
27. <i>Michelle Holland</i>	<i>49734 Shumard Oak Trl Ponchartraine, LA 70454</i>	<i>985-222-0900</i>	<i>Cypress Point Hosp.</i>
28. <i>Bethie Pittman</i>	<i>2021 Oakcliff Dr B.R. 70810</i>	<i>281-8133 281-7571</i>	<i>Deuleman Co.</i>
29. <i>Liz Wood</i>	<i>1101 North St Slidell, LA 70669</i>	<i>337-230-2829</i>	<i>Loblaw &amp; Sons, Inc. Surgery Partners</i>
30. <i>Lisa Stromeyer</i>	<i>2525 Sibley Ave Metairie, LA 70006</i>	<i>504-832-4200</i>	<i>Omaha Hospital, LLC</i>

# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

### PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Noel Jenkins	628 N 4th St	342-6943	LDH
2. Christina Robertson	628 N. 4th	342-4020	LDH-legal
3. MAM HUI	628 N 4th	342-7138	LDH-legal
4. Jessica McH	628 N 4th	342-9268	LDH Legal
5. Glenda Dobson	<del>628 N 4th St.</del> Mendenhall St, LA 540 Sack San Ave	985-244-6758	Cypress Pointe Hospital
6. Karen Rousselle	9525 Seurn Ave Metairie, LA 70002	504-849-4844	Omega Hospital



# LDH/BHSF PUBLIC HEARING

## Topic - Hospital Licensing Standards

Date - May 30, 2019

Name	Address	Telephone Number	AGENCY or GROUP you represent
7. house Barber	4914 W. Idavene Blvd. Atterandua, Va. 21303	(318) 448-3076	Central Va. Surgical Hospital
8.			
9. William R Johnson			LDH Legal
10. Steve Russo (by card)			LDH
11. Senator Bureau (by Veronica)			
12.			

## SUMMARY OF PUBLIC HEARING TESTIMONY

**Proposed Rule:** Hospital Licensing Standards Notice of Intent  
**Public Hearing Date:** May 30, 2019  
**Docket No. :** 05302019-01  
**Conducted By:** Louisiana Department of Health, Bureau of Health Services Financing Staff

Oral Testimony Given By	Organization Represented	Summary of Comments
1. Robert Blair	Robert Blair The Spine Hospital of Baton Rouge and President for the Louisiana Physician Hospitals of America (LAPHA)	<p>Opposes proposed notice of intent.</p> <ol style="list-style-type: none"> <li>1. Construction requirements differentiate a hospital from other medical facilities.</li> <li>2. ADC and ALOS of 2 is an arbitrary number that has no bearing on whether a facility is a hospital. Complexity is the driving factor. Specialty hospitals may fall short of ALOS due to higher quality of care provided to patients.</li> <li>3. ALOS not a good barometer for primarily engaged in providing care to inpatients. CMS removed surgical procedures as they are driving to increase quality and reduce costs by moving patients out of inpatient setting quickly. Managed care providers following CMS lead.</li> <li>4. Telemedicine is example of medical advancement that is going to change hospital admissions in the future.</li> <li>5. LDH has created a loophole between their language and CMS language regarding calculation of ADCs. LDH leaving calculation at discretion of surveyors. ADC and ALOS can drastically fluctuate.</li> <li>6. Inpatient structure is needed. Defining and regulating hospitals based on ALOS is inappropriate and a detriment to patient care and safety.</li> <li>7. Physician owned hospitals (POH) have met CMS parameters and are in the top hospitals in country. Louisiana has five hospitals in top HCAPS score, three POH. POH employ thousands and give to non-profits in community.</li> <li>8. Hospitals should not be defined on ALOS, but by infrastructure capable of handling patients beyond date of service. Implementation of rule appears to be attack on micro hospitals. If hospitals fail 2-2-2 rule, populations forced to go to larger acute care hospitals which results in more expensive healthcare.</li> <li>9. Hospitals which do not have kitchen on site, receive dietary aid from another hospital following CMS standards. CMS has no regulations that vehicle must be designed, equipped and maintained solely for delivery and transport of food. It is a cumbersome burden to hospitals to provide vehicles this purpose.</li> <li>10. Got pretty strong evidence that other entities, specifically the rural hospital association have been notified of this in advance and possibly even consulted on what's come out. No one reached out, no one consulted us, it was disappointing.</li> </ol>

2. Buffy Domingue	Lafayette Surgical Specialty Hospital	<ol style="list-style-type: none"> <li>1. Strongly opposed to NOI at this time.</li> <li>2. Lack of time to respond or ask questions about where intent originated, who is it driving and the sole purpose of some changes that do not align with current CMS regulations</li> <li>3. Strongly opposes adoption of this rule until questions answered</li> <li>4. Primary opposition due to calculation methodology of average daily census; average length of stay; number of off-site campus outpatient locations; number of inpatient beds related to size, intensity, scope of services; and volume of outpatient surgical procedures compared to volume of inpatient procedures. No definition or defined calculation on ratios and therefore hard to know whether complies with definition proposed in new rule.</li> <li>5. Calculations appears to be subjective. Uncertain if presumed by survey or Department pre-calculated and determined if measurement is going to be over a three, five, six, seven or 12 month period as currently in CMS definition.</li> <li>6. On dietary transport issue, definitions already in rule about providing patient meals well written and has been that way for 15 years.</li> <li>7. Cost comparison. Most of hospitals about half of cost of reimbursement of larger acute care hospitals and about 2 times quality of care. Some of hospitals represented provide top notch care within state.</li> </ol>
3. Heath Veuleman	Veuleman Group	<p>Do not represent any physician owned hospitals. Represent health systems, corporations, governments, health systems, hospitals small and large across country and variety of other provider types. Rule has some fatal flaws:</p> <ol style="list-style-type: none"> <li>1. Rurals excised from proposed rule. Creates third class of hospitals, heretofore not known. CMS has two exclusions, critical access and psychiatric hospitals due to reimbursement, not condition. Speaks to competition issue.</li> <li>2. External influences affecting the development and ultimately the final draft of this rule. Unmitigated interest and unbridled access to infringe upon trade.</li> <li>3. When CMS determines basis and scope to be out of compliance, CMS office may terminate provider's participation agreement, but provider will still be licensed hospital. If Health Standards determines provider out of compliance, they would no longer be a hospital at all.</li> <li>4. Suggest and one recommendation is formal surveyors, formal accreditors.</li> <li>5. If rural hospital exists for purpose outside of simple external influence, BHSF probably best. Has resources, would have documents, lift weight off limited survey staff.</li> <li>6. Health Standards cut us no breaks and we don't ask for them.</li> </ol>
4. Ann Heine	Surgical Specialty Center of Baton Rouge, LA	<p>Read from written comments submitted via email to Health Standards and hand delivered today:</p> <ol style="list-style-type: none"> <li>1. Proposed rule is similar to a CMS condition of participation (COP) basis and scope. Proposed rule creates new licensure requirements that hospitals shall be primarily engaged in providing services to inpatients, which is not necessary to define hospital as it is defined in both statute and current licensing standards.</li> </ol>

		<ol style="list-style-type: none"> <li>2. Proposed rule does not clearly define how the department will evaluate and review the provision of care and service to inpatients.</li> <li>3. CMS guidance clarifies that if there are not two inpatients at the time of survey, historical data related to ADC and ALOS over previous 12 months to be used. ADC and ALOS are not absolute thresholds.</li> <li>4. How will LDH determine the timeframe for which one hospital is evaluated compared to another?</li> <li>5. Including number of inpatients beds related to size and scope of services offered is not necessary.</li> <li>6. Proposed rule indicates department will review provision of care and services to two or more inpatients, and effects of care to assess whether patient needs met. What patient outcomes will be measured? Will outcomes be consistent for all hospitals? Length of stay not an outcome measure.</li> <li>7. Proposed rule appears to be attempt to mirror CMS guidance, which determines Medicare participation.</li> <li>8. If rule is not rescinded, department should clarify interpretation and enforcement will be consistent with COP upon which it is based.</li> <li>9. Department should define action will be taken on license if determined to be noncompliant with proposed definition of primarily engaged.</li> </ol>
5. Carter Ilgenfritz	Physicians Medical Center Houma, LA	<p>The survey of definitive healthcare top 25 hospitals with the best and worst HCAHPS Scores ranks Louisiana with five of the top 25 hospitals in the nation. Three of the five hospitals listed can be impacted determinately by this proposed rule.</p> <ol style="list-style-type: none"> <li>1. Rule could possibly remove these high performing hospitals from the state. Department should be improving health and welfare in state. Believe rule will detract from health and welfare of people in Louisiana. Strongly oppose pushing rule forward.</li> <li>2. Rule is redundant and smaller hospitals are already in compliance with rules CMS has implemented. Redundancy will create further layers of challenges and difficulties for hospitals to continue to operate.</li> <li>3. Operating compliance that hospitals must submit to is extremely burdensome on both small and large hospitals.</li> <li>4. Impact because of the scale is more burdensome because resources more limited than for larger hospitals who have substantially more resources.</li> <li>5. For dietary requirements, nothing to substantiate that rule. Food services is arbitrary and there is no reason to add to rule.</li> <li>6. Having five hospitals ranked top in the nation is great for Louisiana. To do something by rule that would be potentially impactful could shift those out of the top 25 in the nation.</li> </ol>
6. Kandi Moore	CEO-Specialist Hospital Shreveport	<ol style="list-style-type: none"> <li>1. Specialty hospitals avail to do what we do the best and serve a great purpose for the state of Louisiana. They are Medicaid and Medicare providers.</li> <li>2. Concern is, take rural hospitals out of the mix. They don't have to meet this criteria.</li> <li>4. For-profit hospitals participate in Medicaid stabilization hospitals assessments. Specialty hospitals asked to reach a level that rural hospitals do not have to attain but have to participate and contribute dollars.</li> </ol>

		<p>5. If going to institute new regulations, need to look at all sides.</p> <p>6. If license taken away from specialty hospitals that do not meet 2-2-2 rule, they become vacant million dollar pieces of property. They are going to be closed facilities.</p> <p>8. Look at all issues, take note of what everybody is saying.</p>
7. Brandon Moore	Park Place Surgical Hospital	<p>Summarize from written comments will be submitting.</p> <ol style="list-style-type: none"> <li>1. Proposed rule regarding primarily engaged similar to recent CMS rules requiring average daily census (ADC) and average length of stay (ALOS) of 2. Very similar, but distinct differences.</li> <li>2. Use of ALOS for determining the definition of a hospital fails to take into account medical advances and technology to reduce length of stay. All hospitals have been successful in reducing length of stay. Testament to evolving medical advances. Length of stay requirement counterintuitive to advancements in medical care. Reduced length of care is a goal for all patients. Encourage department to look at that when using that as part of this definition.</li> <li>3. Major difference from the CMS guidelines is the provision that allows a 3 – 12 month period for ADC and ALOS calculation. More guidance should be given on what time-period will be used, in order to prevent any confusion that this standard may present.</li> <li>4. Department should provide hospitals with a timeframe within the rules to become complaint (should they be found noncompliant) with the new rules for primarily engaged.</li> </ol>

## SUMMARY OF WRITTEN COMMENTS

**Proposed Rule:** Hospital Licensing Standards Notice of Intent  
**Public Hearing Date:** May 30, 2019  
**Docket No. :** 05302019-01  
**Conducted By:** Louisiana Department of Health, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments
Ann Heine Surgical Specialty Center of Baton Rouge, LA	Email and hand delivery	<ol style="list-style-type: none"> <li>1. Proposed rule is similar to a CMS condition of participation (COP) basis and scope. Proposed rule creates new licensure requirements that hospitals shall be primarily engaged in providing services to inpatients, which is not necessary to define hospital as it is defined in both statute and current licensing standards.</li> <li>2. Proposed rule does not clearly define how the department will evaluate and review the provision of care and service to inpatients.</li> <li>3. CMS guidance clarifies that that if there are not two inpatients at the time of survey, historical data related to ADC and ALOS over previous 12 months to be used. ADC and ALOS are not absolute thresholds.</li> <li>4. How will LDH determine the timeframe for which one hospital is evaluated compared to another?</li> <li>5. Including number of inpatients beds related to size and scope of services offered is not necessary.</li> <li>6. Proposed rule indicates department will review provision of care and services to two or more inpatients, and effects of care to assess whether patient needs met. What patient outcomes will be measured? Will outcomes be consistent for all hospitals? Length of stay not an outcome measure.</li> <li>7. Proposed rule appears to be attempt to mirror CMS guidance, which determines Medicare participation.</li> <li>8. If rule is not rescinded, department should clarify interpretation and enforcement will be consistent with COP upon which it is based.</li> <li>9. Department should define action will be taken on license if determined to be noncompliant with proposed definition of primarily engaged.</li> </ol>
Carter Ilgenfritz Physicians Medical Center Houma, LA	Hand delivery	<p>Provided PDF copy of Definitive Healthcare blog identifying top 25 hospitals with best and worst Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) scores. Handwritten notations, "IN THE NATION!" and "5 Louisiana Hospitals In Top 25!"</p>
Heath Veuleman Veuleman Group	Email and hand delivery	<p>Correspondence states rule similar to CMS Condition of Participation called "Basis and Scope", colloquially known as "Primarily Engaged" and/or "2-2-2", which has a finite and distinct purpose to require a hospital to be primarily engaged in delivering inpatient hospital services:</p>

		<p>1. Rural hospitals excised from proposed rule creating new, heretofore unknown and uncodified, class of hospital. Further evidence of anti-competitive intent driving this rulemaking.</p> <p>2. External influences affected development and ultimate final draft of this rule. Had unmitigated conflict of interest and unbridled access to infringe upon trade. Opinion that Louisiana Hospital Association participated in development and drafting of the rule. Louisiana Physician-Owned Hospital Association was never asked to participate.</p> <p>3. When CMS determines the basis and scope to be out of compliance, may terminate participation agreement, but provider still licensed. If LDH HSS determined out of compliance, license would be in jeopardy and hospital would close. Physician-owned and specialty hospitals will have Medicare certification threatened and "license to operate in the state will be under siege."</p> <p>5. Quality and impact of physician-owned and specialty hospitals widely studied and publicly available: "provide better care, at a lower cost, with better outcomes."</p> <p>6. Isolating a class to be purged apparent violation of Federal Trade Commission Act. Not the role of LDH nor HSS.</p> <p>7. Recommends:</p> <ul style="list-style-type: none"> <li>• Remove new, erroneously created class of hospitals (rural hospitals)</li> <li>• Clarify HHS interpretation and enforcement will be consistent with COP</li> <li>• Clarify action HSS will take upon determination of noncompliance</li> <li>• Clarify how initial licensure granted when rule cannot be met when services yet to be delivered</li> <li>• Develop process "by which bad actors who weaponized LDH and/or HSS are held liable"</li> <li>• Use False Claims Act and/or False Swearing as template to create fines, penalties, and other punitive actions</li> </ul> <p>8. Consider this rule outside scope of HSS and rescind. Promulgate proposed rule with recommendations within scope of Bureau of Health Services Financing. Rules relative to reimbursement, not service delivery.</p>
J. Brandon Moore Park Place Surgical Hospital	Hand delivery	<p>Correspondence states:</p> <p>1. Rule similar to recent CMS rules requiring and Average Daily Census (ADC) and Average Length of Stay (ALOS) of 2.</p> <p>2. Use of ALOS for determining definition of hospital fails to take into account medical advances and technology to reduce ALOS.</p> <p>3. Major difference from CMS guidelines is LDH provision that allows 3 – 12 month period for ADC and ALOS calculation. More guidance should have been given on what time-period will be used to prevent confusion or misinterpretation.</p> <p>4. LDH should provide hospitals with timeframe within the rules to become complaint.</p> <p>Opposes proposed notice of intent. Correspondence states:</p> <p>1. Construction requirements differentiate a hospital from other medical facilities.</p> <p>2. ADC and ALOS of 2 is an arbitrary number that has no bearing on whether a facility is a hospital.</p>
Robert Blair The Spine Hospital of Baton Rouge and President for the	Hand delivery	

Louisiana Physician Hospitals of America (LAPHA)		<ol style="list-style-type: none"> <li>3. ALOS not a good barometer for primarily engaged in providing care to inpatients. CMS removed surgical procedures because they are driving to increase quality and reduce costs by moving patients out of inpatient setting quickly.</li> <li>4. Telemedicine is example of medical advancement that is going to change hospital admissions in the future.</li> <li>5. LDH has created a loophole between their language and CMS language regarding calculation of ADCs. ADC and ALOS can drastically fluctuate depending on certain variables.</li> <li>6. Defining and regulating hospitals based on ALOS is inappropriate and a detriment to patient care and safety.</li> <li>7. Physician owned hospitals (POH) have met CMS parameters and are in the top hospitals in country. POH employ thousands and give to non-profits in community.</li> <li>8. Implementation of rule appears to be attack on micro hospitals. Hospitals should not be defined on ALOS, but by infrastructure.</li> <li>9. Dietary transport is cumbersome burden to hospitals to provide vehicles for purpose of providing transportation and delivery of food. This is not a CMS standard.</li> </ol>
Scott Boudreaux AVALA Hospital Covington, LA	Received by HSS	<p>Correspondence states:</p> <ol style="list-style-type: none"> <li>1. Avala providing quality healthcare for patients, verified by high HCAHPS scores of 85.22, low infection rate scores of .014%. Choose to treat each individual patient according to their healthcare needs, not "Cookbook Medicine" (i.e., having statistical targets set as to how long a patient should stay or not stay in the hospital).</li> <li>2. Organization's mantra is "Trust Healthcare Again". Trying to achieve certain number targets takes healthcare out of hands of physicians and into hands of statisticians.</li> <li>3. Requests that LDH reconsider hospital licensure including the 2+2+2 rule and put trust of medicine back into control of physicians.</li> </ol>





**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

August 30, 2019

Scott Boudreaux  
Chief Executive Officer  
Avala  
67252 Industry Lane  
Covington, LA 70433

Dear Mr. Boudreaux:

**RE: Hospital Licensing Standards Notice of Intent**

This letter is in response to your correspondence regarding the Hospital Licensing Standards Notice of Intent published in the April 20, 2019 edition of the *Louisiana Register*. I would like to apologize for the delayed response to your correspondence, which was necessary to ensure that the Department had ample time to analyze the proposed licensing standards and give due consideration to your concerns.

This Notice of Intent proposes to amend the provisions governing the licensing of hospitals that are primarily engaged in providing inpatient care and services, as well as dietary services through a contract with a food delivery service. The public hearing for this proposed Rule was held on May 30, 2019 at 9:30 a.m. in Room 118 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA 70802.

After thoroughly reviewing and considering the comments received in response to the April 20<sup>th</sup> Notice of Intent, the decision was made to move forward with the rulemaking process for this proposed Rule. However, the Department will also promulgate another Notice of Intent in order to amend and clarify the hospital licensing standards to address some of the concerns expressed relative to the provisions of the April 20<sup>th</sup> proposed Rule.

I would like to thank you for taking the time to provide comments in response to this proposed Rule and hope that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions regarding Medicaid administrative rulemaking activity or rulemaking activity relative to the health care licensing standards, you may contact

Scott Boudreaux Response  
August 30, 2019  
Page 2

Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to [Veronica.Dent@la.gov](mailto:Veronica.Dent@la.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Cecile Castello".

Cecile Castello, BSN, RN  
Assistant Deputy Secretary LDH, Health Standards Section

CC/KHB/VYD

c: Allen Enger, LDH Rulemaking Coordinator  
Kimberly Humbles, LDH General Counsel  
Jennifer Katzman, Medicaid Deputy Director

John Bel Edwards  
GOVERNOR



Rebekah E. Gee MD, MPH  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

August 30, 2019

Ann L. Heine  
Chief Executive Officer  
Surgical Specialty Center of Baton Rouge  
8080 Bluebonnet Boulevard  
Baton Rouge, LA 70810

Dear Ms. Heine:

**RE: Hospital Licensing Standards Notice of Intent**

This letter is in response to your correspondence regarding the Hospital Licensing Standards Notice of Intent published in the April 20, 2019 edition of the *Louisiana Register*. I would like to apologize for the delayed response to your correspondence, which was necessary to ensure that the Department had ample time to analyze the proposed licensing standards and give due consideration to your concerns.

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Ann L. Heine Response  
August 30, 2019  
Page 2

Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to [Veronica.Dent@la.gov](mailto:Veronica.Dent@la.gov).

Sincerely,

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Cecile Castello, BSN, RN  
Assistant Deputy Secretary LDH, Health Standards Section

CC/KHB/VYD

c: Allen Enger, LDH Rulemaking Coordinator  
Kimberly Humbles, LDH General Counsel  
Jennifer Katzman, Medicaid Deputy Director

John Bel Edwards  
GOVERNOR



Rebekah E. Gee MD, MPH  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

August 30, 2019

Carter Ilgenfritz  
Market Chief Executive Officer  
Surgery Partners, Inc.  
Physicians Medical Center  
218 Corporate Drive  
Houma, LA 70360

Dear Mr. Ilgenfritz:

**RE: Hospital Licensing Standards Notice of Intent**

This letter is in response to your correspondence regarding the Hospital Licensing Standards Notice of Intent published in the April 20, 2019 edition of the *Louisiana Register*. I would like to apologize for the delayed response to your correspondence, which was necessary to ensure that the Department had ample time to analyze the proposed licensing standards and give due consideration to your concerns.

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Carter Ilgenfritz Response  
August 30, 2019  
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Assistant Deputy Secretary LDH, Health Standards Section

CC/KHB/VYD

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Kimberly Humbles, LDH General Counsel  
Jennifer Katzman, Medicaid Deputy Director



**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

August 30, 2019

**Louisiana Physician Hospitals of America**

Central Louisiana Surgical Hospital	Omega
Cypress Point Surgical Hospital	Park Place Surgical Hospital
Doctors Hospital at Deer Creek	Physicians Medical Center
Avala Surgical Hospital	Southern Surgical Hospital
Heart Hospital of Lafayette	Specialists Hospital Shreveport
Lafayette General Surgical Hospital	Sterling Surgical Hospital
Lafayette Surgical Specialty Hospital	Surgical Specialty Center
Monroe Surgical Hospital	The Spine Hospital of Louisiana

To Whom It May Concern:

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Louisiana Physician Hospitals of America  
August 30, 2019  
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Cecile Castello, BSN, RN  
Assistant Deputy Secretary LDH, Health Standards Section

CC/KHB/VYD

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Kimberly Humbles, LDH General Counsel  
Jennifer Katzman, Medicaid Deputy Director



John Bel Edwards  
GOVERNOR



Rebekah E. Gee MD, MPH  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

August 30, 2019

J. Brandon Moore  
Chief Executive Officer  
Park Place Surgical Hospital  
4811 Ambassador Caffery Parkway, Suite 100  
Lafayette, LA 70508

Dear Mr. Moore:

**RE: Hospital Licensing Standards Notice of Intent**

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J. Brandon Moore Response  
August 30, 2019  
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GOVERNOR



Rebekah E. Gee MD, MPH  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

August 30, 2019

Heath Veuleman  
Senior Advisor, Principal  
Veuleman Group  
207 North Peters Street  
New Orleans, LA 70130

Dear Mr. Veuleman:

**RE: Hospital Licensing Standards Notice of Intent**

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Heath Veuleman Response  
August 30, 2019  
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