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Executive Orders

EXECUTIVE ORDER JBE 16-33

Flags at Half-Staff

In light of the tragedies of this week, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect and to honor the lives that have been tragically lost to violence, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol and all public buildings and institutions of the State of Louisiana immediately until sunset on Tuesday, July 12, 2016.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Tuesday, July 12, 2016.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 8th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#002

EXECUTIVE ORDER JBE 16-34

Flags at Half-Staff

WHEREAS, on July 17, 2016, six law enforcement officers were shot in Baton Rouge, resulting in the deaths of Baton Rouge Police Officers Matthew Gerald and Montrell Jackson, and East Baton Rouge Parish Sheriff's Deputy Brad Garafola; and

WHEREAS, the prayers of the people of the State of Louisiana are with the victims, their families, and all of the law enforcement officers that put their lives at risk every day in order to serve and protect the people of our State and nation.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect and to honor the victims of this tragedy, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol and all public buildings and institutions of the State of Louisiana immediately until sunset on Monday, July 25, 2016.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Monday, July 25, 2016.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 18th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#006

EXECUTIVE ORDER JBE 16-35

Bond Allocation Procedures

WHEREAS, Section 146 of the Internal Revenue Code of 1986 (hereafter "the Act"), as amended (hereafter "the Code"), restricts the total principal amount of certain private activity Bonds which exclude interest from gross income for federal income tax purposes under Section 103 of the Code, including the portion of government use Bonds allocated to non-governmental use as required by the Act (hereafter "Bonds") which may be issued within the state of Louisiana during each calendar year to a dollar amount determined by (a) multiplying \$80 times the population of the state, based on the most recently published estimate of the population for the state of Louisiana released by the United States Bureau of Census before the beginning of each such calendar year, and (b) multiplying such amount by the cost of living adjustment, as determined pursuant to the Act;

WHEREAS, Act No. 51 of the 1986 Regular Session of the Louisiana Legislature (hereafter "Act No. 51 of 1986") authorizes the Governor to allocate the volume limit applicable to the Bonds (hereafter "the ceiling") among the State and its political subdivisions in such a manner as the Governor deems to be in the best interest of the State of Louisiana;

WHEREAS, pursuant to the authorization of both the Act and Act No. 51 of 1986, the Governor hereby elects to (a) provide for the manner in which the ceiling shall be determined, (b) establish the method to be used in allocating the ceiling, (c) establish the application procedure for obtaining an allocation of Bonds subject to such ceiling, and (d) establish a system of record keeping for such allocations; and

WHEREAS, it is necessary to renew Executive Order BJ 2008-47, issued on August 22, 2008, in order to provide for procedures for bond allocations.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Definitions

A. Each abbreviation provided in the preamble of this Order, *supra*, shall have the same meaning throughout

all the sections, subsections, and paragraphs of this Order.

B. The following definitions shall apply:

1. "Economic Development Bonds" means all types of Bonds subject to the ceiling other than Industrial Bonds, Housing Bonds, and Student Loan Bonds;

2. "Housing Bonds" means Bonds subject to the ceiling and issued to provide housing described under Section 142(d) of the Code ("Qualified Residential Rental Project Bonds"), or issued to provide housing under Section 143 of the Code ("Qualified Mortgage Bonds");

3. "Industrial Bonds" means Bonds for manufacturers, as defined by North American Industry Classification System (NAICS) codes 113310, 211, 213111, 541360, 311-339, 511-512 and 54171, or facilities financed as part of the Department of Health and Hospitals' Drinking Water Revolving Loan Fund, which Bonds subject to the ceiling are (1) designated as "exempt facility Bonds" in Section 142(a) of the Code (other than Housing Bonds), or (2) issued for facilities to treat, abate, reduce, or eliminate air or water pollution pursuant to the transition rules of the Tax Reform Act of 1986;

4. "Issuer" or "Issuers" means any entity or entities now or hereafter authorized to issue Bonds under the Louisiana Constitution of 1974, as amended, or the laws of the state of Louisiana; and

5. "Student Loan Bonds" means Bonds subject to the ceiling and issued under the authority of Section 144(b) of the Code.

C. Any term not defined in this Order shall have the same meaning as in the Act.

SECTION 2: Determination of Ceilings for 2015 and Thereafter

A. The sum of four hundred sixty-seven million, seventy-two thousand, four hundred dollars (\$467,072,400) represents the amount of the ceiling determined by the staff of the Louisiana State Bond Commission (hereafter "the SBC staff") for the year of 2015 pursuant to the provisions of the Act.

B. On or before February 15, 2017, and on or before February 15 of each subsequent calendar year during the life of this Order, the SBC staff shall determine the amount of the ceiling for each calendar year in the manner set forth in the Act. Upon determining the amount of the ceiling, the SBC staff shall promptly notify the governor in writing of the amount determined.

SECTION 3: General Allocation Pool; Method of Allocation

A. A pool, designated as the "General Allocation Pool", shall be hereby created. The entire ceiling for each calendar year shall be automatically credited to the General Allocation Pool. Allocations for all types of Bonds that require allocations from the ceiling under the Act may be requested, and granted, from this General Allocation Pool. During the calendar year of 2016, and in each calendar year thereafter, at the discretion of the Governor, amounts shall be initially reserved for allocations from the General Allocation Pool as follows:

1. Until September 1 of each year, an amount equal to fifty (50) percent of the General Allocation Pool shall be reserved for allocations for Housing Bonds;

2. Until September 1 of each year, an amount equal to twenty-five (25) percent of the General Allocation Pool shall be reserved for allocations for Student Loan Bonds;

3. Until September 1 of each year, an amount equal to twenty (20) percent of the General Allocation Pool shall be reserved for allocations for Economic Development Bonds; and

4. Until September 1 of each year, an amount equal to five (5) percent of the General Allocation Pool shall be reserved for allocations for Industrial Bonds.

B. On September 1 of each year, any amounts remaining and not allocated for the purposes described in Section 3(A) (1) through (4) shall be combined, and allocations from such amounts remaining shall be granted, at the discretion of the governor, without regard to any reservation for particular use.

C. The allocation of the ceiling from the General Allocation Pool shall be considered by the governor on the basis of criteria established by the governor.

D. The issuance of an executive order by the governor, awarding a portion of the ceiling to a particular issue of Bonds, shall be evidence of each allocation granted pursuant to this Order. A copy of such an executive order shall be promptly furnished to the Louisiana State Bond Commission.

SECTION 4: Application Procedure for Allocations

A. All issuers in and of the state of Louisiana may apply for allocations.

B. An issuer who proposes to issue Bonds for a specific project or purpose must apply for an allocation of a portion of the ceiling for the particular project or purpose by submitting a volume cap allocation request to the Louisiana State Bond Commission staff, with a copy to the governor or the governor's designee, as part of the initial submission of debt application request. The allocation form, if any, may be revised from time to time at the discretion of the governor. However, at a minimum, all applications must contain the following information:

1. The name and the address of the issuer of the Bonds;

2. In the case of Bonds, other than Student Loan Bonds or Qualified Mortgage Bonds, the name and mailing address of (a) the initial owner or operator of the project, (b) an appropriate person from whom information regarding the project can be obtained, and (c) the person to whom notification of the allocation should be made;

3. If required by the Code, the date of adoption by the issuer of an inducement resolution adopted for the purpose of evidencing "official intent";

4. The amount of the ceiling which the issuer is requesting be allocated for the project or purpose of the application, including, without limitation, a statement of the minimum amount of allocation that will support the issuance of the Bonds and a general description of the project (including the address or other description of its location) or the purpose to be financed; and

5. In the case of Housing Bonds for Qualified Residential Rental Project Bonds, the following criteria must be included on the application for the project:

(a) Identify whether the project promotes neighborhood revitalization and/or in-fill development, including new development on vacant or adjudicated properties, and whether the buildings are complimentary to the existing architecture in the neighborhood;

(b) Identify whether the project is for scattered site single family units, or, if the project is for a multiple unit dwelling or dwellings, the number of buildings in the project and the number of units that each dwelling contains;

(c) Identify whether the project is located proximate to a central business district or within a targeted area within the meaning of the Internal Revenue Code of 1986, as amended;

(d) Identify whether the project leverages other governmental or private equity funds and/or governmental incentives, and, if so, what the sources and amounts are; and

(e) Identify whether a workforce training program is a component of the project's development plan.

6. In the case of Industrial Bonds and Economic Development Bonds requested for manufacturing purposes, the following criteria must be included on the application:

(a) Identify the North American Industrial Classification System code reported to the federal government and the Department of Labor;

(b) Report the economic impact over ten years as determined by the Department of Economic Development;

(c) Identify the number of jobs to be created and/or retained and the average salary for both new and retained jobs as well as the amount of the capital investment made or to be made; and

(d) Identify other state programs that provide any financial or business incentives as part of this expansion or new location;

7. Either

(a) a bond purchase agreement or other written commitment to purchase the Bonds for which an allocation is requested, executed by one or more purchasers, setting forth in detail the principal and interest payment provisions and the security for the Bonds, accepted by the issuer or the beneficiary of the Bonds;

(b) in the case of a public offering of the Bonds for which the allocation from the ceiling is requested, a binding bond purchase or underwriting agreement obligating the underwriter or underwriters to sell or purchase the Bonds within ninety (90) days of the receipt of an allocation, setting forth in detail the proposed principal and interest payment provisions and the security for the Bonds, accepted by the issuer or the beneficiary of the Bonds; or

(c) a \$7,500 escrow deposit which will be forfeited in the event the Bonds for which an allocation is granted are not delivered prior to the expiration of such allocation as provided in Section 4(E). The \$7,500 escrow deposit shall be returned to the party depositing the same without interest upon the substitution of the items described in (a) or (b), *supra*, or delivery of the

Bonds within the allocation period. In the event that such Bonds are not delivered within the allocation period, the deposit shall be forfeited and deposited in the State Treasury, unless the failure to deliver such Bonds is the result of the Louisiana State Bond Commission denying

approval of such Bonds, in which case the deposit shall be returned to the party depositing same, without interest;

8. A specific date as to when the bond allocation is required and when the project financing is intended to close;

9. A schedule showing the project time or projected timing of the use of the bond proceeds;

10. Information necessary to evidence compliance with the criteria established by the governor; and

11. A letter from bond counsel, addressed to the governor, expressing that the Bonds for which an allocation is requested are subject to the ceiling.

C. Upon receipt of the application required by Section 4(B), the SBC staff shall determine if the requirements of Section 4(B) have been met. When it is determined the requirements have been met, the SBC staff shall immediately forward a copy of the application to the governor.

D. Until September 1 of each year, the maximum amount of allocation that may be granted for any project or purpose in any calendar year (other than for Qualified Mortgage Bonds issued by the Louisiana Housing Finance Agency or Student Loan Bonds) shall not exceed the greater of thirty million dollars (\$30,000,000) or fifteen (15) percent of the ceiling for that year. If an issuer submits a request for an allocation that is in Excess of this authorized amount, the SBC staff shall retain the application for consideration of the allocation of additional amounts, which may only be granted on or after September 1 of that year.

E. Any allocation from the ceiling (other than carry forward allocations described in Section 4(H), *infra*) shall expire unless the Bonds receiving the allocation are delivered by the earlier of (1) ninety (90) days from the date of the executive order awarding the allocation, or (2) December 31st of the calendar year granted. In the event the allocation of the ceiling for a particular project or purpose expires as provided in this section, the issuer may resubmit its application for an allocation of a portion of the ceiling for such project or purpose. The application of the issuer relating to such project or purpose shall be reviewed in chronological order of receipt of the resubmission.

F. On September 1 of each year, the SBC staff shall determine the remaining amounts of the ceiling and shall submit to the governor for consideration all applications for allocations of Bonds in excess of the permitted amounts.

G. The SBC staff shall maintain accurate records of all allocations and all Bonds delivered. All issuers of Bonds that have received an allocation shall notify the SBC staff of the delivery of Bonds within five (5) days after the delivery of such Bonds and shall specify the total principal amount of Bonds issued. The SBC staff shall provide to any person so requesting, within a reasonable time: (1) the amount of unallocated ceiling remaining on the date such request is made; (2) a list of allocations (naming the issuer and amount of allocation) which have been made and the date of each allocation; (3) a list of applications being held by the SBC staff which have requested a larger allocation than permitted; and (4) a list of Bonds which have been given an allocation and have been delivered.

H. If the ceiling exceeds the aggregate amount of Bonds issued during any year by all issuers, the governor

EXECUTIVE ORDER JBE 16-36

Cooperative Endeavor Agreements

may allocate such to issuers for use as a carry forward for one or more carry forward projects permitted under the Act by issuing an executive order for all carry forward projects for which an application has been submitted that contains the elements required by Section 4(B), and for which a request to be treated as a carry forward project has been received by the SBC staff. The SBC staff shall notify the issuers which are allocated a portion of the ceiling for a carry forward project at least five (5) days prior to the last date an election to carry forward a portion of the ceiling may be made.

I. This Order only relates to Bonds subject to the private activity bond volume limitation set forth in the Act. No issuer shall apply for or be entitled to an allocation from the ceiling for Bonds that are not subject to the private activity bond volume limitation set forth in the Act.

J. The governor may modify, amend, supplement, or rescind this Order to reflect any change in federal or state legislation; provided, however, that any modification, amendment, supplementation or rescission shall not rescind any allocation granted for a project or purpose pursuant to the terms of this Order if such allocation is required under federal law in order to maintain the tax-exempt status of the Bonds issued for such project or purpose.

K. Notwithstanding any provision in this Order to the contrary, if the governor determines it to be in the best interest of the State of Louisiana, because a project or purpose serves a crucial need or provides an extraordinary benefit to the State of Louisiana or to an area within the State of Louisiana, through the issuance of an executive order, the governor may authorize allocations in any amount or grant any or every portion of the ceiling, and for any purpose.

SECTION 5: Miscellaneous Provisions

A. The responsibility of the SBC staff as set forth in this Order shall be exercised by the SBC staff independent of any of its other duties and responsibilities owed to the Louisiana State Bond Commission.

B. The governor will certify in each executive order that grants a portion of the ceiling to a particular issue of Bonds that said bond issue meets the requirements of Section 146 of the Code.

SECTION 6: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#014

WHEREAS, Article VII, Section 14 of the Louisiana Constitution of 1974 provides that “the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise;”

WHEREAS, Article VII, Section 14 also authorizes, for a public purpose, cooperative endeavors among the state and its political subdivisions or political corporations, and with the United States or its agencies, or with any public or private association, corporation, or individual;

WHEREAS, Louisiana Revised Statute 38:2193 mandates that, if the attorney general is of the opinion that a contract of the state or any political subdivision violates the constitutional provision concerning the donation of public funds, the attorney general shall institute a civil proceeding to invalidate the contract if in his opinion such a proceeding is necessary for the assertion or protection of any right or interest of the state or political subdivision within the intentment of La. Const. art. VII, §14;

WHEREAS, since a cooperative endeavor agreement (“agreement”) is a form of contract, it would be in the best interest of the State of Louisiana to have all such agreements reviewed by an arm of the State that is not a party to the agreement, prior to the agreement becoming effective, in order to limit the potential for litigation over the validity of the agreement;

WHEREAS, the best interest of the State of Louisiana is also served by monitoring the use of these agreements from both a legal and a budgetary perspective, and by providing a centralized record of these agreements; and

WHEREAS, the Division of Administration is charged with the responsibility for the State of Louisiana of overseeing the acquisition of supplies and services under contractual agreements and, therefore, has the expertise and necessary personnel to determine if these agreements are in violation of La. Const. art. VII, §14, or any procurement statutes or rules which regulate the manner in which the State and its agencies and political subdivisions must acquire supplies and services.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Unless exempted by written delegation of authority granted by the director of the Office of State Procurement, Division of Administration, with the approval of the Commissioner of Administration, each department, commission, board, agency, and/or office in the executive branch of the State of Louisiana (“department”) shall submit all cooperative endeavor agreements (“agreements”) which require the expenditure of public funds to the Office of State Procurement for review and approval.

SECTION 2: To the fullest extent possible, all agreements shall be submitted for review at least forty-five (45) days prior to the effective date of the agreement. The Office of State Procurement shall review the agreement as expeditiously as possible and return it to the submitting department. Agreements not submitted within forty-five (45) days in advance of the effective date must be accompanied by a written explanation of the reasons for the delay in submission.

SECTION 3: Agreements with non-governmental entities for economic development purposes should contain the specific goals sought to be achieved by the non-governmental entity and methods for reimbursement to the state if those goals are not met. Further, a non-governmental entity, other than one participating in a business incubator program, Quality Jobs Program, or Enterprise Zone Program, which defaults on the agreement, breaches the terms of the agreement, ceases to do business, or ceases to do business in Louisiana, shall be required to repay the State, and the agreement must set out the terms of the repayment.

Agreements based on legislative appropriation to a public or quasi-public agency or entity which is not a state budget unit must include a comprehensive budget, provided to the agency and the legislative auditor, showing all anticipated uses of the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives, including measures of performance.

Agreements should contain a plan to monitor compliance with the terms of the agreement, assigning a particular person within the agency to be responsible for monitoring the agreement. Written reports must be provided to the agency at least every six (6) months concerning the use of funds and the specific goals and objectives for the use of the funds.

Agreements that contain an authorization for a non-governmental recipient to make grants should contain a listing of all sub-recipients, or at the minimum, a detailed description of the grant application and approval process, ensuring that funds are not provided for any use inconsistent with the provisions of the Agreement.

SECTION 4: Agreements in which the state provides a guarantee or credit enhancement for a private for-profit entity and which do not contemplate the issuance of bonds should be submitted to the State Bond Commission for approval prior to execution. Evidence of the necessary Bond Commission approval should be attached to the submitted agreement.

SECTION 5: The Commissioner of Administration must be informed by the state agency in advance of the confection of any agreement in which a non-public party is expected to generate or expend revenue of one million dollars or more per year from the operation, management or control of a state resource. Agreements must comply with La. R.S. 39:366.1 et seq., the Accountability for State Resources Act, as applicable. The state agency must advise the Joint Legislative Committee on the Budget at least 30 calendar days before its next meeting of the proposed agreement. The JLCB will determine whether to hold a hearing, in accordance with the provisions of La. R.S. 39:366.11. No agreement shall be officially confectioned prior to the expiration of time for JLCB to hold a hearing.

SECTION 6: All agreements shall be submitted with a BA-22 or other appropriate budgetary form evidencing the availability of funds.

SECTION 7: All agreements shall contain a provision that conditions the agreement and/or continuation of the agreement on a) the availability of sufficient funds to fulfill the obligations of the department under the agreement and b) the approval of the director of the Office of State Procurement and/or the Commissioner of Administration, unless exempt by written delegation of authority granted pursuant to Section 1 of this Order.

SECTION 8: All departments, commissions, boards, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in implementing the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#015

EXECUTIVE ORDER JBE 16-37

The Hudson Initiative

WHEREAS, pursuant to La. R.S. 39:2001 et seq., the Louisiana Initiative for Small Entrepreneurships (hereafter "the Hudson Initiative") was established to facilitate the growth and stability of Louisiana's economy by fostering utilization by state interests of the business offerings available for state procurement and public contracts from Louisiana's small entrepreneurship;

WHEREAS, an inclusive economic development initiative for state agencies aimed at developing and enhancing opportunities for small and emerging businesses will successfully promote the state goal of wealth creation and poverty reduction;

WHEREAS, Louisiana Revised Statute 39:2005 outlines specific methods of source selection which may be utilized by an agency in contracting with small entrepreneurship and La. R.S. 39:2008 requires every state agency to participate in the Hudson Initiative; and

WHEREAS, the interest of the citizens of the State of Louisiana are served by the expansion of business development programs that encourage the continued growth of small and emerging businesses.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: All departments, commissions, boards, offices, entities, agencies, and offices of the State of

Louisiana, or any political subdivision thereof, shall include small and emerging businesses in the business offerings available for state procurement and public contracts.

SECTION 2: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with implementing the provisions of this Order.

SECTION 3: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#016

EXECUTIVE ORDER JBE 16-38

Accountability for Line Item Appropriations

WHEREAS, the Louisiana Legislature annually appropriates sums commonly referred to as "Line Item Appropriations" to non-state entities, quasi-public entities, and private agencies and entities for public purposes;

WHEREAS, it is the responsibility of executive branch agencies to administer payments pursuant to legislative Line Item Appropriations;

WHEREAS, Article VII, Section 14 of the Louisiana Constitution of 1974 expresses the general prohibition that "funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private";

WHEREAS, Line Item Appropriations are itemized in the General Appropriation Bill (HB1) of each regular session of the Louisiana Legislature, or in supplemental appropriation bills, as items within the budgets of various executive branch agencies, or in what is commonly known as Schedule 20 of HB1; and

WHEREAS, it is in the best interest of the State of Louisiana to insure that payments pursuant to Line Item Appropriations are carefully administered to assure that funds are utilized to accomplish the anticipated public purposes and to avoid constitutionally prohibited donations.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Line Item Appropriations require a cooperative endeavor agreement or contract between the recipient and an executive branch state agency to satisfy the provisions of La. Const. art. VII, §14. In addition to the requirements of this Order, cooperative endeavor agreements

must comply with the provisions of Executive Order JBE 16-36, issued on July 22, 2016, governing cooperative endeavors.

SECTION 2: Cooperative endeavor agreements or contracts for Line Item Appropriations shall include the following information:

A. The legal name and mailing address of the recipient entity, and, if the entity is nonpublic, a description of the legal status of the entity. Any private entity required to register with the Secretary of State must be in good standing with that office;

B. The names and addresses of all officers and directors of any non-public recipient entity. Additionally, the entity shall provide the names and addresses of its executive director, chief executive officer, or other person responsible for the day-to-day operations of the entity, and the key personnel responsible for the program or functions funded through the line item appropriation;

C. A listing of any person receiving any thing of economic value from any recipient entity if that person is a state elected or appointed official or a member of the immediate family of a state elected or appointed official. The listing shall include the value of the thing of economic value received, the position held by the state elected or appointed official or by the immediate family member. If the listing indicates any relationship which may be a possible violation of the Code of Governmental Ethics, La. R.S. 42:1101 *et seq.*, the state agency shall seek an opinion from the Board of Ethics as to the propriety of proceeding with the agreement;

D. A detailed description of the public purpose sought to be achieved through the Line Item Appropriation which must conform to the program described in the appropriations bill and, if applicable, supplemental information form submitted to the legislature;

E. A comprehensive budget, provided to the agency and the legislative auditor, showing all anticipated uses of the Line Item Appropriation, other sources of revenue and expenditures for the entity, program or project funded by the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives, including measures of performance;

F. A plan to monitor compliance with the terms of the cooperative endeavor agreement authorizing the expenditure of the Line Item Appropriation, assigning a particular person within the agency to be responsible for monitoring the agreement. Written reports must be provided to the agency at least quarterly concerning the use of the Line Item Appropriation and the specific goals and objectives for the use of the appropriation; and

G. A certification that the entity has no outstanding audit issues or findings or that the entity is working with appropriate governmental agencies to resolve any issues or findings.

SECTION 3: Executive branch agencies are prohibited from making disbursements pursuant to Line Item Appropriations until the cooperative endeavor agreement or contract has received final approval of the Office of State Procurement within the Division of Administration. Final approval shall not be granted unless all of the information required pursuant to Section 2 of this Order has been provided.

EXECUTIVE ORDER JBE 16-39

Small Purchase Procedures

SECTION 4: Executive branch agencies shall monitor disbursements pursuant to Line Item Appropriations on a quarterly basis. Under circumstances such that the recipient entity has not demonstrated substantial progress towards goals and objectives, based on established measures of performance, further disbursements shall be discontinued until substantial progress is demonstrated or the entity has justified to the satisfaction of the agency reasons for the lack of progress. If the transferring agency determines that the recipient failed to use the Line Item Appropriation within the estimated duration of the project or failed to reasonably achieve its specific goals and objectives, without sufficient justification, the agency shall demand that any unexpended funds be returned to the state treasury unless approval to retain the funds is obtained from the Division of Administration and the Joint Legislative Committee on the Budget.

SECTION 5: Executive branch agencies may call upon the Office of the Legislative Auditor and/or the Office of State Inspector General to assist the agency in determining whether Line Item Appropriations are being or have been properly expended.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in implementing the provisions of this Order.

SECTION 7: The provisions of this Order shall be applicable to Line Item Appropriations for Fiscal Year 2016-2017 and thereafter. The provisions of this Order shall not be applicable to Line Item Appropriations to public or quasi-public agencies or entities that have submitted a budget request to the Division of Administration in accordance with Part II of Chapter 1 of Title 39 of the Louisiana Revised Statutes of 1950 and transfers authorized by specific provisions of the Louisiana Revised Statutes of 1950 to local governing authorities and transfers authorized by the Constitution of the State of Louisiana.

SECTION 8: The Commissioner of Administration may develop guidelines to further the implementation of this Executive Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#017

WHEREAS, the Louisiana Procurement Code, in La. R.S. 39:1596, authorizes the governor to establish procedures for the procurement of small purchases with the caveat that “procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section;”

WHEREAS, the Louisiana Procurement Code exempts small purchases from the competitive sealed bidding requirements of the code;

WHEREAS, Louisiana businesses are a driving force in the Louisiana economy;

WHEREAS, Executive Order No. BJ 10-16, signed August 27, 2010, established the procedure for the procurement of small purchases in accordance with the statutory guidelines of the Louisiana Procurement Code; and

WHEREAS, it is necessary to rescind and terminate Executive Order No. BJ 10-16 through the issuance of a replacement Executive Order.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: All departments, institutions, boards, commissions, budget units, and agencies of the executive branch of state government, and the officers and employees thereof, (hereafter "agency") shall observe, be guided by, and implement the specific directives on small purchase procedures set forth in this Order. This Order in no way affects or changes the purchasing authority delegated to an agency by the chief procurement officer as defined in La. R.S. 39:1556(6). No provision of this Order shall be construed as a limitation on the number of quotations to be solicited prior to making a purchase or procurement. Louisiana businesses, especially small and emerging businesses, small entrepreneurships, and veterans or service-connected disabled veteran-owned small entrepreneurships should be utilized to the greatest extent possible when soliciting prices.

SECTION 2: Unless the context clearly indicates otherwise, the words and terms used in this Order shall be defined as follows:

A. "Small purchases" means (1) any procurement not exceeding twenty-five thousand dollars (\$25,000), or (2) any procurement of those items listed in Section 5 of this Order, which are exempt from the competitive sealed bidding requirements of the Louisiana Procurement Code, as provided in that Section.

B. "Certified small and emerging business" means a business certified as a small and emerging business by the Division of Small and Emerging Business Development, Department of Economic Development, in accordance with the Provisions of the Small and Emerging Business Development Program, La. R.S. 51:941 *et seq.*, and included on the most recent list of certified small and emerging businesses issued by the Division of Certified Small and Emerging Business Development;

C. "Small Entrepreneurship" means a business certified as a small entrepreneurship by the Department of Economic Development, in accordance with the Provisions of the Louisiana Initiative for Small Entrepreneurships (Hudson Initiative), La. R.S. 39:2006;

D. "Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurship" means a business certified as a veteran or service-connected disabled veteran-owned small entrepreneurship by the Department of Economic Development, in accordance with the provisions of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), La. R.S. 39:2176;

E. "Authorized dealer" means a company that is authorized by the manufacturer to sell and/or provide service for its products; and

F. "Louisiana authorized dealer" means a company that satisfies the requirements of a resident business defined in La. R.S. 39:1556(47) and is authorized by the manufacturer to sell and/or provide service for its products.

SECTION 3: The following items are not subject to the procedures set forth in this Order:

A. Those items covered by an existing state contract; and

B. Labor and Material contracts which exceed five thousand dollars (\$5,000).

SECTION 4: Except as otherwise provided in this Order, all small purchases shall be made in accordance with the following minimum procedures:

A. No competitive process is required for purchases which do not exceed five thousand dollars (\$5,000) per single purchase transaction.

B. Price quotations shall be solicited from three (3) or more bona fide, qualified vendors for purchases exceeding five thousand dollars (\$5,000), but not exceeding fifteen thousand dollars (\$15,000).

1. Quotations may be made by telephone, facsimile, or other means and shall be awarded on the basis of the lowest responsive quotation. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship. Agency files shall document and list all solicited vendors and each vendor's contact person, summarize quotations received, indicate the successful vendor and state the reason why any lower quotation was rejected. Agency files should also contain written confirmation of the quotation from the successful vendor.

2. When the price is determined to be reasonable, the requirement to solicit three (3) quotations may be waived when making purchases from a small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship that is currently certified by the Department of Economic Development. Reasonable is a best value determination based on price, delivery, service, and/or any other related factors. This determination is to be maintained in the file.

3. Soliciting three (3) quotations may be waived when purchasing from a business registered with the Secretary of State as domiciled in Louisiana. A business analysis must determine that in-state prices are equal or

better than two other current price comparisons. Comparisons may include, but are not limited to, state contract prices, General Services Administration (GSA) prices, or similar resources. Comparison documents are to be maintained in the file.

C. Price quotations shall be solicited from five (5) or more bona fide, qualified vendors for purchases exceeding fifteen thousand (\$15,000) but not exceeding twenty-five thousand dollars (\$25,000).

1. Quotations may be made by facsimile or written means and shall be awarded on the basis of the lowest responsive price quotation received. Whenever possible, at least two (2) of the bona fide, qualified vendors shall be certified small and emerging businesses, small entrepreneurships, or a veteran or service-connected disabled veteran-owned small entrepreneurship. Agency files shall document and list all solicited vendors and each vendor's response, summarize quotations received, indicate the awarded quotation, and state the reason why any lower quotation was rejected.

2. The requirement to solicit certified small and emerging businesses, small entrepreneurships, or veteran or service-connected disabled veteran-owned small entrepreneurships is waived for those agencies that post on LaPAC, Louisiana's internet based system for posting vendor opportunities and award information.

3. A minimum of three (3) working days shall be allowed for receipt of quotations.

4. All written or facsimile solicitations shall include the closing date, time, and all pertinent competitive specifications, including quantities, units of measure, packaging, delivery requirements, ship-to location, terms and conditions, and other information sufficient for a supplier to make an acceptable quotation. Precautionary measures shall be taken to safeguard the confidentiality of vendor responses prior to the closing time for receipt of quotations. No quotation shall be evaluated using criteria not disclosed in the solicitation.

SECTION 5: The following items are considered small purchases and may be procured in the following manner:

A. No competitive process is required for the following items:

1. Repair parts for equipment obtained from an authorized dealer. A Louisiana authorized dealer shall be used if available. This provision does not apply to the stocking of parts;

2. Equipment repairs obtained from an authorized dealer. A Louisiana authorized dealer shall be used if available;

3. Vehicle repairs not covered by a competitive state contract or the state fleet maintenance repair contract, obtained from an authorized dealer. A Louisiana authorized dealer shall be used if available;

4. Vehicle body repairs covered by insurance recovery and in accordance with insurance requirements;

5. Livestock procured at public auction or from an individual which has purebred certification approved by the Department of Agriculture and Forestry;

6. Purchasing or selling transactions between state budget units and other governmental agencies;

7. Publications and/or copyrighted materials purchased directly from the publisher or copyright holder not exceeding ten thousand dollars (\$10,000);

8. Publications and/or copyrighted materials purchased by libraries or text rental stores from either subscription services or wholesale dealers which distribute for publishers and/or copyright holders not exceeding fifteen thousand dollars (\$15,000);

9. Public utilities and services provided by local governments;

10. Prosthetic devices, implantable devices, and devices for physical restoration which are not covered by a competitive state contract;

11. Educational training, including instructor fees, and related resources (except equipment) used to enhance the performance of state employees and good standing of state agencies, including memberships in and accreditations by professional societies and organizations, not exceeding ten thousand dollars (\$10,000), except for customized training which is covered under La. R.S. 39:1551 *et seq.*;

12. Procurements for clients of blind and vocational rehabilitation programs not covered by competitive state contract which are federally funded at a rate of at least 78.7%, regulated by Title 34, Parts 361, 365, 370, and 395 of the Code of Federal Regulations, and in accordance with OMB Circular A-102;

13. Materials, supplies, exhibitor fees, and exhibit booths for conferences, seminars, and workshops, or similar events (business, educational, promotional, cultural, etc.) for participation in promotional activities which enhance economic development or further the department's mission, duties and/or functions, not exceeding ten thousand dollars (\$10,000) with the approval of the department secretary, or agency equivalent, if not covered by competitive state contract;

14. Wire, related equipment, time and material charges to accomplish repairs, adds, moves, and/or changes to telecommunications systems not exceeding two thousand five hundred dollars (\$2,500);

15. Working class animals trained to perform special tasks, including but not limited to, narcotics detection, bomb detection, arson investigation, and rescue techniques;

16. Food, materials, and supplies for teaching and training not exceeding ten thousand dollars (\$10,000), where the purchasing, preparing, and serving of food are part of the regularly prescribed course;

17. Shipping charges and associated overseas screening and broker fees between international and domestic origins and destinations not exceeding ten thousand dollars (\$10,000) per transaction;

18. Renewal of termite service contracts;

19. Purchase of supplies, operating services, or equipment for Louisiana Rehabilitation Services, Traumatic Head and Spinal Cord Injury Trust Fund Program. Although competitive bidding is not required under this paragraph, whenever practicable, three (3) quotations from bona fide, qualified vendors should be obtained. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business, a small entrepreneurship; or a veteran or service-connected disabled veteran-owned small entrepreneurship;

20. Purchasing of clothing at retail necessary to individualize clients at state developmental centers in compliance with Federal Regulations for ICF/MR facilities;

21. Health insurance for the managers of Randolph-Sheppard programs, as defined by 20 U.S.C. §107 *et seq.*, and paid from income generated by unmanned vending locations;

22. Purchases made to resell as part of a merchandising program with the written approval on file from the secretary of the department, or agency equivalent, when it is not practical or feasible to obtain competitive price quotations;

23. Commercial Internet Service not exceeding one thousand five hundred dollars (\$1,500) per subscription per year;

24. Advertising, where permitted by law, and the head of an agency or designee certifies that specific media is required to reach targeted audiences;

25. Scientific and laboratory supplies and equipment when procured by colleges and universities for laboratory or scientific research not to exceed twenty-five thousand dollars (\$25,000) per transaction;

26. Publication of articles, manuscripts, etc. in professional scientific, research, or educational journals/media and/or the purchase of reprints not exceeding ten thousand dollars (\$10,000);

27. Livestock sperm and ova;

28. Royalties and license fees for use rights to intellectual property, such as but not limited to: patents, trademarks, service marks, copyrights, music, artistic works, trade secrets, industrial designs, domain names, etc.;

29. Equipment moves by the original equipment manufacturer or authorized dealer to ensure equipment operation to original equipment manufacturer specifications, calibration, warranty, etcetera, not to exceed twenty-five thousand dollars (\$25,000) per transaction;

30. Mailing list rentals or purchases not exceeding ten thousand dollars (\$10,000); and

31. Art Exhibition rentals and/or loan agreements and associated costs of curatorial fees, transportation, and installation.

B. For the following items, telephone or facsimile price quotations shall be solicited, where feasible, from at least three (3) bona fide, qualified vendors. Whenever possible, at least one (1) of the bona fide, qualified vendors shall be a certified small and emerging business, a small entrepreneurship, or a veteran or service-connected disabled veteran-owned small entrepreneurship.

1. Farm products including, but not limited to, fresh vegetables, milk, eggs, fish, or other perishable foods, when it is determined that market conditions are unstable and the competitive sealed bidding process is not conducive for obtaining the lowest prices;

2. Food, materials, and supplies needed for:

a. Operation of boats and/or facilities in isolated localities where only limited outlets of such supplies are available and the cost of the food, materials, and supplies do not exceed twenty-five thousand dollars (\$25,000); and/or

b. Juvenile detention homes and rehabilitation facilities/homes where the number of inmates, students, or clients is unstable and unpredictable;

3. Convention and meeting facilities not exceeding twenty-five thousand dollars (\$25,000), provided that any associated food or lodging must be in accordance with Policy & Procedure Memorandum No. 49 – General Travel Regulations;

4. Gasoline and fuel purchases not exceeding ten thousand dollars (\$10,000);

5. Equipment for blind operated facilities not covered by competitive state contract;

6. Livestock feed commodities, including but not limited to soybean meal, cottonseed meal, and oats not exceeding ten thousand dollars (\$10,000);

7. Seed commodities, including but not limited to rye grass, soybean seed, corn seed, cotton seed, etc. as well as related fertilizers, herbicides, insecticides, and fungicides when not covered by competitive state contract;

8. FAA PMA approved aircraft parts and/or repairs, inspections, and modifications performed by an FAA-certified mechanic and/or at an FAA certified repair station in accordance with FAA requirements with approval by the head of the agency or head of Office of Aircraft Services, Division of Administration; and

9. Air and bus charters in accordance with PPM 49, including group travel that does not qualify for commercial rates available to individual travelers.

SECTION 6: In the absence of a good faith business basis, no purchase or procurement shall be artificially divided within a cost center, or its equivalent, to avoid the competitive process or the solicitation of competitive sealed bids.

SECTION 7: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of this Order.

SECTION 8: Executive Order No. BJ 10-16 is superseded by this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#018

EXECUTIVE ORDER JBE 16-40

The Committee on Parole

WHEREAS, the Committee on Parole, created within the Department of Public Safety and Corrections by La. R.S. 15:574.2, consists of seven (7) members designated by and serving at the pleasure of the governor and one ex officio member;

WHEREAS, Louisiana Revised Statute 15:574.2(A)(7) provides that the actual salaries of members of the Committee on Parole are to be authorized by executive order; and

WHEREAS, it is necessary to prescribe selection of the vice-chair and the actual salaries of the members of the Committee.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Governor shall select the vice-chair from the membership of the Committee, who shall preside over hearings in the absence of the chair.

SECTION 2: Members of the Committee shall, in accordance with the compensation limits set forth in R.S. 15:574.2(A)(7), receive the following annual salaries:

A. The chair of the Committee shall receive an annual salary of fifty thousand dollars (\$50,000);

B. The vice-chair of the Committee shall receive an annual salary of forty-seven thousand dollars (\$47,000);

C. Each of the other members of the Committee shall receive an annual salary of forty-four thousand dollars (\$44,000); and

D. The chair, vice-chair and other members of the Committee shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of his/her duties.

SECTION 3: Executive Order No. BJ 2008-68, issued on August 22, 2008, is hereby rescinded.

SECTION 4: The provisions of this Order are effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#019

EXECUTIVE ORDER JBE 16-41

Recreational Trails Program

WHEREAS, the Recreational Trails Program (RTP) is an assistance program of the U.S. Department of Transportation's Federal Highway Administration (FHWA) designed to help states provide and maintain recreational trails;

WHEREAS, the Fixing America's Surface Transportation (FAST) Act, Public Law 114-94, reauthorized the Recreational Trails Program for federal fiscal years 2016 through 2020;

WHEREAS, the Recreational Trails Program for Louisiana is currently administered by the Louisiana Office of State Parks, Division of Outdoor Recreation, within the

Department of Culture, Recreation and Tourism, as directed by Executive Order BJ 08-05;

WHEREAS, the Office of State Parks includes within its mission the administration of programs related to outdoor recreation and trails, and in the last fiscal year alone, fifteen new RTP projects were approved for federal assistance totaling more than \$1.4 million statewide; and

WHEREAS, it is necessary to reauthorize the program and appropriate for administration of the program to continue under the Department of Culture, Recreation and Tourism, within the Office of the Lieutenant Governor.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Recreational Trails Program shall be administered by the Department of Culture, Recreation and Tourism, within the Office of the Lieutenant Governor.

SECTION 2: This Order supersedes BJ 08-05, is effective upon signature, and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or until terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#020

EXECUTIVE ORDER JBE 16-42

Troops to Teachers

WHEREAS, the Troops to Teachers Program gives veterans the opportunity to draw upon the leadership skills, knowledge, and experience they have developed in their military careers and provide positive impacts on the young people within their communities;

WHEREAS, the mission of the Louisiana Troops to Teachers Program is to improve Louisiana education by providing motivated, experienced, and dedicated teachers for the state's classrooms and to help relieve teacher shortages by certifying and employing veterans and former Department of Defense and Energy employees as teachers and teachers' aides for service in Louisiana's public schools and, when military personnel are unavailable, qualified civilian teachers;

WHEREAS, the Louisiana Troops to Teachers Program is currently administered by the Department of Veterans Affairs pursuant to Executive Order BJ 08-06; and

WHEREAS, it is necessary to reauthorize the program and appropriate for administration of the program to continue under the Department of Veterans Affairs.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Troops to Teachers Program shall be administered by the Department of Veterans Affairs.

SECTION 2: This Order supersedes BJ 08-06, is effective upon signature, and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or until terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of July, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#021

EXECUTIVE ORDER JBE 16-43

Drug Control and Violent Crime Policy Board

WHEREAS, incidents of violent crimes and drug abuse are problematic for the State of Louisiana;

WHEREAS, the federal government provides financial assistance to the State to improve the operational effectiveness of our drug and violent crime control efforts through such programs as the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C.A. §13701 et seq., and the Edward Byrne Memorial Justice Grant Assistance (JAG) Program, 42 U.S.C.A. §3750 et seq.; and

WHEREAS, the interests of the citizens of the State of Louisiana would be best served through the utilization of a single coordinating board to administer these federal assistance programs in order to function as a communication forum and to facilitate the coordination of drug abuse and violent crime projects within the State.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Drug Control and Violent Crime Policy Board ("Board") is reestablished within the executive department, Office of the Governor.

SECTION 2: The duties of the Board shall include, but are not limited to, the following:

A. Serve as an advisory body to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice;

B. Develop a statewide drug control and violent crime strategy encompassing all components of the criminal justice system; and

C. Perform any duties and functions requested by the Governor and/or the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

SECTION 3: The Board shall be composed of a maximum of eighteen (18) members, who unless otherwise specified, shall be designated by and serve at the pleasure of the Governor. The membership of the Board shall be as follows:

EXECUTIVE ORDER JBE 16-44

Louisiana D.A.R.E. Advisory Board

A. The Superintendent of State Police, or the Superintendent's designee;

B. Three (3) district attorneys, one each from the eastern, the western, and the middle areas of the state;

C. The executive director of the Louisiana District Attorneys Association, or the executive director's designee;

D. Three (3) sheriffs, one each from the eastern, the western, and the middle areas of the state;

E. The executive director of the Louisiana Sheriffs' Association, or the executive director's designee;

F. Three (3) chiefs of police, one each from the eastern, the western, and the middle areas of the state;

G. One (1) marshal or constable selected from either the eastern, the western, or the middle areas of the state; and

H. Five (5) at-large members who are private citizens and/or former members of the state judiciary and who are active in community drug control and prevention.

SECTION 4: The chair of the Board shall be appointed by the Governor from the membership of the Board. All other officers, if any, shall be elected from the membership of the Board.

SECTION 5: The Board shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 6: Board members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Council.

Board members who are employees or elected public officials of the State of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

Board members who are also members of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 7: Support staff, facilities, and resources for the Board shall be provided by the Office of the Governor.

SECTION 8: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Board in implementing the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 4th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#033

WHEREAS, the Congress of the United States has enacted the Anti-Drug Abuse Act of 1988, 21 U.S.C.A. §801 et seq., as amended, in recognition of the serious problems occurring within the United States due to the increase of drug abuse;

WHEREAS, the Louisiana Commission on Law Enforcement has been created within the Office of the Governor to operate as a forum on drug abuse issues and to coordinate drug abuse projects;

WHEREAS, two-thirds of Louisiana's public, private, and parochial school systems have executed written agreements with law enforcement agencies to implement a Drug Abuse Resistance Education (D.A.R.E.) program; and

WHEREAS, the D.A.R.E. Program is a nationally recognized and copyrighted drug education effort with specific criteria for implementation which requires strict replication of the parent project.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana D.A.R.E. Advisory Board ("Board") is reestablished within the executive department, Office of the Governor.

SECTION 2: The duties of the Board shall include, but are not limited to, the following:

A. Develop, promote, monitor and evaluate the D.A.R.E. Program throughout the State of Louisiana; and

B. Serve as an advisory body to the Louisiana Commission on Law Enforcement regarding the performance of its duties in relation to the D.A.R.E. Program.

SECTION 3: The Board shall consist of thirteen (13) members, who shall be appointed by and serve at the pleasure of the Governor, selected as follows:

A. The president of the Louisiana D.A.R.E. Officers' Association, or the president's designee;

B. One (1) representative from the Drug Policy Board;

C. Two (2) members from the Louisiana Sheriff's Association;

D. Two (2) members from the Louisiana Chiefs of Police Association;

E. Two (2) members from the Louisiana Commission on Law Enforcement;

F. One (1) principal representing a Louisiana public school;

G. One (1) teacher representing a Louisiana elementary school; and

H. Three (3) members representing community interests.

SECTION 4: The chair of the Board shall be appointed by the Governor from the membership of the Board. All other officers, if any, shall be elected by the members of the Board from its membership.

SECTION 5: The Board shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 6: Board members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Council.

Board members who are employees or elected public officials of the State of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

Board members who are also members of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 7: Support staff, facilities, and resources for the Board shall be provided by the Office of the Governor.

SECTION 8: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Board in implementing the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 4th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#034

EXECUTIVE ORDER JBE 16-45

Louisiana Rehabilitation Council

WHEREAS, the State Rehabilitation Advisory Council was originally established by executive order to provide Louisiana's citizens with disabilities assistance in their pursuit of meaningful careers and gainful employment through specific programs;

WHEREAS, the Rehabilitation Act of 1973, 29 U.S.C.A. §701 *et seq.*, as amended by the Workforce Investment Act (Public Law 105-220), and the Rehabilitation Act Amendments of 1998 and subsequent amendments to 29 U.S.C.A. §725, and the Workforce Innovation and Opportunity Act of 2014 (Public Law 113-128) provide the State of Louisiana with financial assistance to promote effective programs of vocational rehabilitation services for individuals with disabilities; and

WHEREAS, it is in the best interest of the citizens of the State of Louisiana to continue providing its citizens with disabilities vocational rehabilitation services and/or programs by the continuation of a rehabilitation council.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority

vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Rehabilitation Council (hereafter "Council") is reestablished within the executive department, Louisiana Workforce Commission;

SECTION 2: The duties of the Council shall include, but are not limited to, the following:

A. Reviewing, analyzing, and advising the Louisiana Workforce Commission, Office of Louisiana Rehabilitation Services (hereafter "Louisiana Rehabilitation Services"), regarding the performance of its responsibilities, particularly the responsibilities relating to:

1. Eligibility (including order of selection);
2. The extent, scope, and effectiveness of services provided; and

3. Functions performed by state agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment under 29 U.S.C.A. §720 *et seq.*

B. In partnership with Louisiana Rehabilitation Services:

1. Developing, agreeing to, and reviewing the state goals and priorities for rehabilitation services in accordance with 29 U.S.C.A. §721(a)(15)(E); and

2. Evaluating the effectiveness of the vocational rehabilitation program and submitting progress reports to the commissioner of the Rehabilitation Service Administration, Department of Education, Washington, D.C.;

C. Advising Louisiana Rehabilitation Services regarding activities authorized to be carried out under the Rehabilitation Act, and assisting in the preparation of and amendments to the state plan, together with the necessary applications, reports, needs assessments, and evaluations as required by 29 U.S.C.A. §720 *et seq.*

D. To the extent feasible, conducting a review and analysis of the effectiveness of, and consumer satisfaction with:

1. The functions performed by Louisiana Rehabilitation Services;

2. The vocational rehabilitation services provided by Louisiana Rehabilitation Services and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under 29 U.S.C.A. §701 *et seq.*; and

3. The employment outcomes achieved by eligible individuals receiving services under 29 U.S.C.A. §725, including the availability of health and other employment benefits in connection with such employment outcomes.

E. Preparing and submitting an annual report to the governor and the commissioner of the Rehabilitation Service Administration, Washington, D.C., on the status of vocational rehabilitation programs operating within the state, and making the report available to the public;

F. To avoid duplication of efforts and enhance the number of individuals served, by coordinating activities with the activities of other councils within the state, including the Statewide Independent Living Council, established under 29 U.S.C.A. §796d; the advisory panel established under §612(a)(21) of the Individuals with Disabilities Education Act (as amended by §101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17),

[20 U.S.C.A. §1412 (a)(21)]; the State Developmental Disabilities Council described in §124 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §6024); the State Mental Health Planning Council established under §1914(a) of the Public Health Service Act (42 U.S.C.A. §300x-4(a)); and the State Workforce Investment Council;

G. Providing for coordination and the establishment of working relationships between Louisiana Rehabilitation Services, the Statewide Independent Living Council, and the Centers for Independent Living within the state;

H. Preparing, in conjunction with Louisiana Rehabilitation Services, a plan for the provision of such resources, including such staff and other personnel, as may be necessary and sufficient to carry out the functions of the Council under this section. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan;

I. Supervising and evaluating such staff and other personnel as may be necessary to carry out its functions; and

J. Performing such other functions as the State Rehabilitation Council determines to be appropriate, that are comparable to the other functions performed by the Council.

SECTION 3: Members of the Council shall be selected from all areas of the state and shall be knowledgeable of the vocational rehabilitation services offered to individuals with disabilities. The majority of the membership of the Council shall be composed of Louisiana citizens with disabilities, representing a broad range of disabilities, and who are not employed by a Center for Independent Living, Louisiana Rehabilitation Services or any state agency.

SECTION 4: The Council shall consist of twenty-six (26) members, who shall be designated by the Governor to serve terms of up to three (3) years, including:

A. Twenty-four (24) voting members selected as follows:

1. One (1) representative from a parent training and information center established pursuant to §682(a) of the Individuals with Disabilities Education Act (as added by §101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17) [20 U.S.C.A. §1482(a)];

2. One (1) representative from the Statewide Independent Living Council, established under 29 U.S.C.A. §796d, who must be the chairperson or other designee of the Statewide Independent Living Council;

3. One (1) representative of the Client Assistance Program established under 29 U.S.C.A. §732;

4. One (1) representative from the service providers for the community rehabilitation program;

5. Four (4) representatives of business, industry, and labor;

6. Twelve (12) members representing a cross section of the following categories:

a. Individuals with physical, cognitive, sensory, and/or mental disabilities;

b. Representatives of individuals with disabilities who have difficulty representing themselves; and

c. Current or former applicants for, or recipients of, vocational rehabilitation services.

7. One (1) representative of the State Workforce Investment Council;

8. One (1) representative of the state educational agency responsible for the public education of students with disabilities who are eligible to receive services under 29 U.S.C.A. §720 and part B of the Individuals with Disabilities Education Act; and

9. One (1) representative of the directors of a project carried out under §121 of the Federal Rehabilitation Act Amendments of 1998; and

10. One (1) representative of the area of rehabilitation technologies.

B. Two (2) non-voting ex officio members, selected as follows:

1. One (1) vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs shall serve as an ex officio, non-voting member of the Council; and

2. The director of the Louisiana Rehabilitation Services shall serve as an ex officio, non-voting member of the Council.

SECTION 5: The voting members of the Council shall select a chair from among its voting membership.

SECTION 6: No member of the Council, other than the representative of the Client Assistance Program and the representative of the Sect. 121 project, may serve more than two consecutive full terms.

SECTION 7: The majority of the voting membership of the Council shall not be composed of individuals who receive compensation, either directly or indirectly, for work they perform on behalf of any vocational rehabilitation service provider.

SECTION 8: The Council shall coordinate its activities with the Office of Disability Affairs, Office of the Governor. The Council shall follow all rules and regulations of the State of Louisiana, including those concerning purchasing, procurement, hiring, and ethics.

SECTION 9: Council members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Council.

Council members who are employees or elected public officials of the State of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

Council members who are not employees of the State of Louisiana or a political subdivision of the State of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49 and with the advance written approval of the commissioner of the Division of Administration.

Council members who are also members of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 10: The Council shall convene, a minimum of four (4) meetings a year, in such places as it determines to

be necessary to conduct Council business and conduct such forums or hearings as the Council considers appropriate.

SECTION 11: Support staff, facilities, and resources for the Council shall be provided by Louisiana Rehabilitation Services.

SECTION 12: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Council in implementing the provisions of this Order.

SECTION 13: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 4th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#035

EXECUTIVE ORDER JBE 16-46

Office of the First Lady

WHEREAS, the First Lady is the official hostess of the State of Louisiana and, as a result, the First Lady holds both private status and *de facto* state officer status;

WHEREAS, the First Lady of Louisiana, Mrs. Donna Edwards, promotes the health and safety of Louisiana citizens through education, environmental and social issues, including many that impact Louisiana's women and children;

WHEREAS, the First Lady, Mrs. Donna Edwards, welcomes visiting dignitaries, makes speeches and public service announcements, authors articles pertaining to her projects, holds press conferences and interviews, participates in charity events, and performs numerous other duties and activities at the Governor's request; and

WHEREAS, the numerous duties and activities of the First Lady place significant administrative demands on the office of the First Lady which necessitate that it be given formal recognition.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Office of the First Lady is created and established within the Executive Department, Office of the Governor. The First Lady shall be an ambassador and a spokesperson for the State of Louisiana, and shall perform other official duties.

SECTION 2: Support staff, office facilities, and reasonable operating expenses shall be provided to the Office of the First Lady by the Executive Department, Office of the Governor.

SECTION 3: The First Lady shall not receive compensation or a per diem. Nonetheless, she may receive reimbursement for actual travel expenses incurred in the representation of the Office of the First Lady, in accordance with state guidelines and procedures, contingent upon the availability of funds, and the approval of the commissioner of the Division of Administration.

SECTION 4: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Office of First Lady in implementing the provisions of this Order.

SECTION 5: Upon signature of the Governor, the provisions of this Order shall be made retroactive to January 11, 2016, and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or until terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 4th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#036

EXECUTIVE ORDER JBE 16-47

Emergency Response Commission

WHEREAS, the ability to protect the citizens of the state of Louisiana depends, in part, upon the adequacy of local community emergency response plans;

WHEREAS, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001 et seq., requires states to establish and maintain an emergency response commission which has technical expertise in the field of emergency response to notify and protect the public in the event of a release of an extremely hazardous substance into the environment; and

WHEREAS, through the enactment of La. R.S. 30:2364, the Louisiana Legislature created the Emergency Response Commission within the Department of Public Safety and Corrections to: establish emergency planning districts; appoint local emergency planning committees; supervise and coordinate the activities of local emergency planning committees; provide the Environmental Protection Agency with information concerning notification received on certain releases of hazardous materials and substances; designate, as necessary, facilities subject to hazardous material reporting procedures; recommend a standardized inventory form for gathering required information and develop reporting procedures which reduce duplication of reporting; recommend, as necessary, additional substances which should be defined as hazardous materials; act as the central advisory body for coordinating state and federal activities concerning community "Right-to-Know" legislation with regard to hazardous materials and

substances; establish procedures for recalling and processing public requests for information; and review local emergency planning committee emergency response plans and recommend revisions as necessary.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Emergency Response Commission (hereafter "Commission") is reestablished and continued; it shall be composed of nineteen (19) members designated by and serving at the pleasure of the Governor, selected as follows:

- A. The deputy secretary of the Department of Public Safety, or the deputy secretary's designee;
- B. The secretary of the Department of Environmental Quality, or the secretary's designee;
- C. The secretary of the Department of Agriculture and Forestry, or the secretary's designee;
- D. The director of the Governor's Office of Homeland Security and Emergency Preparedness, or the director's designee;
- E. A representative of the Right-To-Know Unit, Department of Public Safety, Office of State Police;
- F. A representative of the Louisiana Emergency Preparedness Association;
- G. A member of the Louisiana State University Firearm Training Program;
- H. A representative of environmental interests;
- I. A representative of the chemical industry nominated by the Louisiana Chemical Association; and
- J. Ten (10) at-large members.

SECTION 2: The Governor shall select the chair of the Commission from its membership. All other officers, if any, shall be elected by members of the Commission from its membership.

SECTION 3: The Commission shall have authority to receive grants, donations, or gifts of money, equipment, supplies, or services from any public or private source to enable it to fulfill the duties and responsibilities specified in Title 30 of the Louisiana Revised Statutes of 1950, as amended.

SECTION 4: The Commission shall meet quarterly and at the call of the chair.

SECTION 5: Commission members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Commission.

Commission members who are employees or elected public officials of the State of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

Commission members who are also members of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

SECTION 7: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 5th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#082

EXECUTIVE ORDER JBE 16-48

Rules and Policies on Leave for Unclassified Service

WHEREAS, no permanent rules or policies on annual, compensatory, sick, special, military, and other leave exist for certain officers and employees who are in the unclassified service of the state;

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Applicability

A. The rules and policies established by this Order shall be applicable to all officers and employees in the unclassified service of the executive branch of the state of Louisiana with the exception of elected officials and their officers and employees, and the officers and employees of a system authorized by the Louisiana Constitution or legislative act to manage and supervise its own system. Elected officials of the executive branch may adopt the rules and policies set forth in this Order to govern the unclassified officers and employees within their department.

B. Nothing in this Order shall be applied in a manner which violates, or is contrary to, the Fair Labor Standards Act (hereafter "FLSA"), the Family and Medical Leave Act, or any other applicable federal or state law, rule, or regulation.

SECTION 2: Definitions

Unless the context of this Order clearly indicates otherwise, the words and terms used in this Order shall be defined as follows:

A. "Annual leave" means leave with pay granted to an officer or employee for the purpose of rehabilitation, restoration, or maintenance of work efficiency, or the transaction of personal affairs.

B. "Appointing authority" means the agency, department, board, or commission, or the officers and employees thereof, authorized by statute or lawfully delegated authority to make appointments to positions in state service.

C. "Compensatory leave" means time credited for hours worked outside the regularly assigned work schedule.

D. "Continuing position" means an office or position of employment with the state which reasonably can be

expected to continue for more than one (1) calendar year or twelve (12) consecutive months.

E. "Duty for military purposes" means the performance of continuous and uninterrupted military duty on a voluntary or involuntary basis and includes active duty, active duty for training, initial active duty for training, full-time National Guard duty, annual training, and inactive duty for training (weekend drills).

F. "Educational leave" means leave that may be granted by an appointing authority to an officer or employee for a limited educational purpose in accordance with the uniform rules developed by the commissioner of administration. "Educational leave with pay" is a subclass of educational leave and is for the purpose of attending an accredited educational institution to receive formalized training which will materially assist the officer or employee in performing the type of work performed by the officer or employee's department.

G. "Governor's Executive Office" ("executive department, Office of the Governor") means the budget unit 01-100 as listed in Schedule 01 of the General Appropriations Act

H. "Intermittent employee" means a person employed in state service that is not hired to work on a regularly scheduled basis.

I. "Leave without pay" and/or "leave of absence without pay" means a period of leave or time off from work granted by the appointing authority, or the appointing authority's designee, for which the officer or employee receives no pay.

J. "Overtime hour" means an hour worked at the direction of the appointing authority, or the appointing authority's designee, by an unclassified officer or employee who is serving in a position which earns compensatory leave:

1. On a day which is observed as a holiday in the department and area of the officer or employee's employment and falls on a day within the workweek, or is observed as a designated holiday in lieu of a regular holiday observed in the department;

2. In excess of the regular duty hours in a regularly scheduled workday;

3. In excess of the regular duty hours in a regularly scheduled workweek;

4. In excess of forty (40) hours worked during any regularly recurring and continuous seven (7) day calendar work period where excessive hours are systematically scheduled;

5. In excess of eighty (80) hours worked during any regularly recurring and continuous fourteen (14) day calendar work period where excessive hours are systematically scheduled;

6. In excess of the hours worked in a regularly established, continuous, and regularly recurring work period where hours average forty (40) hours per week, regardless of the manner in which scheduled; or

7. For the hours an officer or employee works on a day in which a department or division thereof is closed due to an emergency, within the meaning of R.S. 1:55(B)(5).

K. "Regular tour of duty" means an established schedule of work hours and days recurring regularly on a

weekly, biweekly, or monthly basis for full-time or part-time unclassified officers or employees.

L. "Seasonal employee" means a person employed on a non-continuous basis for a recognized peak work load project.

M. "Sick leave" means leave with pay granted to an officer or employee who is unable to perform their usual duties and responsibilities due to illness, injury, or other disability, or when the officer or employee requires medical, dental, or optical consultation or treatment.

N. "State service" means employment in the executive branch of state government, including state supported schools, agencies and universities; public parish school systems; public student employment; membership on a public board or commission; and employment in the legislative and judicial branches. To constitute state service, the service or employment must have been performed for a Louisiana public entity. Contract service does not constitute state service.

O. "Temporary employee" means any person, other than an unclassified appointee, who is continuously employed in the unclassified service of the executive branch for a period which does not exceed and is not reasonably expected to exceed one (1) year or twelve (12) consecutive calendar months.

P. "Unclassified appointee," a subclass of officers and employees in the unclassified service of the executive branch, means certain unclassified officers who are appointed by:

1. The governor to serve on the governor's executive staff, the governor's cabinet, and the executive staff of the governor's cabinet, or to serve as the head of a particular agency;

2. A cabinet member to serve on the cabinet member's executive staff;

3. The superintendent of the Department of Education to serve on the superintendent's executive staff;

4. An elected official in the executive branch who has adopted the rules and policies set forth in this Order, to serve on the elected official's executive staff; or

5. The secretary of the Department of Economic Development to serve in the unclassified service in the Office of Business Development. An unclassified appointee shall be on duty and available to serve and in contact with their appointing authority throughout the term of their appointment except when on leave.

Q. "Unclassified service" means those positions of state service, as defined in Article X, Sections 2 and 42 of the Louisiana Constitution of 1974, which are not positions in the classified service.

SECTION 3: Full-time Employees

For each full-time unclassified officer or employee, each appointing authority shall establish administrative work weeks of not less than forty (40) hours per week.

SECTION 4: Granting Leave

A. At the discretion of their appointing authority, or the appointing authority's designee, unclassified officers and employees may be granted time off for vacations, illnesses, and emergencies.

B. At the discretion of their appointing authority, or the appointing authority's designee, an unclassified officer or

employee may, for disability purposes, be granted annual leave, leave without pay, or sick leave.

SECTION 5: Earning of Annual and Sick Leave

A. Annual and sick leave shall not be earned by the following persons:

1. Members of boards, commissions, or authorities;
2. Student employees, as defined under Civil Service Rules;
3. Temporary, intermittent, or seasonal employees; and
4. Part-time employees of the Governor's Executive Office.

B. The earning of annual and sick leave shall be based on the equivalent of years of full time state service and shall be credited at the end of each calendar month, or at the end of each regular pay period, in accordance with the following general schedule:

1. Less than three (3) years of service, at the rate of .0461 hour of annual leave and .0461 hour of sick leave for each hour of regular duty;
2. Three (3) or more years but less than five (5) years of service, at the rate of .0576 hour of annual leave and .0576 hour of sick leave for each hour of regular duty;
3. Five (5) or more years but less than ten (10) years of service, at the rate of .0692 hour of annual leave and .0692 hour of sick leave for each hour of regular duty;
4. Ten (10) or more years but less than fifteen (15) years of service, at the rate of .0807 hour of annual leave and .0807 hour of sick leave for each hour of regular duty; and
5. Fifteen (15) or more years of service, at the rate of .0923 hour of annual leave and .0923 hour of sick leave for each hour of regular duty.

For purposes of this Section, an unclassified appointee shall only accrue sick and annual leave on the basis of a forty (40) hour work week. Unclassified appointees shall earn annual and sick leave based on their equivalent years of full-time state service in accordance with the following general schedule.

1. Less than three (3) years of service, at the rate of twelve (12) days per year each for annual and sick leave;
2. Three (3) or more years but less than five (5) years of service, at the rate of fifteen (15) days per year each for annual and sick leave;
3. Five (5) or more years but less than ten (10) years of service, at the rate of eighteen (18) days per year each for annual and sick leave;
4. Ten (10) or more years but less than fifteen (15) years of service, at the rate of twenty-one (21) days per year each for annual and sick leave; and
5. Fifteen (15) or more years of service, at the rate of twenty-four (24) days per year each for annual and sick leave.

For purposes of this Section, contract service does not constitute either fulltime or part-time state service and cannot be used to determine, and has no effect upon, the rate at which annual leave and sick leave is earned by, accrued by, or credited to a full-time or part-time officer or employee in unclassified state service.

C. No unclassified officer or employee shall be credited with annual or sick leave:

1. For any overtime hour(s);
2. For any hour(s) of leave without pay, except as set forth in Section 17 of this Order;
3. For any hour(s) of on-call status outside the officer or employee's regular duty hour(s);
4. For any hour(s) of travel or other activity outside the officer or employee's regular duty hours; or
5. For any hour(s) of a holiday or other non-work day which occurs while on leave without pay, except as set forth in Section 17 of this Order.

SECTION 6: Carrying Annual and Sick Leave Forward

Accrued unused annual and sick leave earned by an unclassified officer or employee shall be carried forward to succeeding calendar years without limitation.

SECTION 7: Use of Annual Leave

A. An unclassified officer or employee shall apply for use of annual leave, but it may be used only with the approval of the appointing authority, or the appointing authority's designee.

B. An unclassified officer or employee shall apply for use of, and use, annual leave, compensatory leave, or leave without pay when unavailable to serve their appointing authority as a result of voluntary or involuntary conditions, such as personal vacations or trips unrelated to the officer or employee's duties; performing political activities during regular tour of duty hours; or performing for compensation non-appointment related activities, duties, or work during regular tour of duty hours.

C. Annual leave shall not be charged for non-work days and/or non-regular tour of duty hours.

D. The minimum charge to annual leave records shall be in increments of not less than one-tenth (.1) of an hour, or six (6) minutes.

E. An appointing authority, or the appointing authority's designee, may require an unclassified officer or employee to use their accrued annual leave whenever such an action is determined by the appointing authority, or the appointing authority's designee, to be in the best interest of the department. When such an instance occurs, no unclassified officer or employee shall be required to reduce their accrued annual leave to less than two hundred forty (240) hours except:

1. When granted leave without pay, but subject to the military leave provision of Section 17 of this Order; or
2. When the absence from work is due to a condition covered by the Family and Medical Leave Act.

SECTION 8: Use of Sick Leave

A. Sick leave with pay shall be used by an unclassified officer or employee who has accrued sick leave, when an illness or injury prevents the officer or employee from reporting to duty, or when medical, dental, or optical consultation or treatment is attended. Nonetheless, an unclassified appointee shall apply for use of, or use, sick leave when the appointee is unavailable or mentally or physically unable to serve their appointing authority as a result of voluntary or involuntary conditions.

B. A medical certificate is not required for an unclassified officer or employee to use accrued sick leave, but the appointing authority, or the appointing authority's designee, has discretion to require such a certificate as justification for an absence.

C. Sick leave shall not be charged for non-work days, or for non-regular tour of duty hours.

D. The minimum charge to sick leave records shall be in increments of not less than one-tenth (.1) of an hour, or six (6) minutes.

E. Sick leave with pay shall only be granted after it has been accrued by an unclassified officer or employee. Sick leave with pay shall not be advanced.

F. An appointing authority, or the appointing authority's designee, has discretion to place an unclassified officer or employee on sick leave after an officer or employee asserts the need to be absent from work due to an injury or illness.

SECTION 9: Transfer of Annual and Sick Leave

A. A classified or unclassified officer or employee shall have all accrued annual and sick leave credited to them when the officer or employee transfers without a break in state service into a position covered by this Order.

B. An officer or employee shall have all accumulated annual and sick leave, to the extent that it was earned, credited to them when the officer or employee transfers without a break in service from a department not covered by this Order into a department covered by this Order.

C. When an unclassified officer or employee transfers without a break in service to a position covered by other leave rules of the state, the officer or employee's accrued annual and sick leave shall be transferred to the new employing state department or agency. The new employing department or agency shall either hold the annual and sick leave in abeyance or integrate the leave into its own system. The officer or employee's accumulated leave shall not be reduced during such integration.

SECTION 10: Disbursement of Accrued Annual Leave Upon Separation

A. Upon the resignation, death, removal, or other final termination from state service of an unclassified officer or employee, the officer or employee's accrued annual leave shall be paid in a lump sum, up to a maximum of three hundred (300) hours, disregarding any final fraction of an hour. The payment shall be computed as follows:

1. When the officer or employee is paid on an hourly basis, the regular hourly rate that the officer or employee received at the time of termination from state service shall be multiplied by the number of hours of their accrued annual leave, which number is not to exceed three hundred (300) hours; or

2. When the officer or employee is paid on other than an hourly basis, the officer or employee's hourly rate shall be determined by converting the salary the officer or employee received at the time of termination from service into a working hourly rate. The converted hourly rate shall be multiplied by the number of hours of their accrued annual leave, which number is not to exceed three hundred (300) hours.

B. An unclassified officer or employee who is paid for accrued annual leave upon termination from service and who is subsequently re-employed in a leave earning classified or unclassified position shall reimburse the state service, through the employing agency, for the number of hours the officer or employee was paid which exceeded the number of work hours that transpired during the officer or

employee's break from state service. In turn, the officer or employee shall receive a credit for the number of hours of annual leave for which the officer or employee made reimbursement to state service.

SECTION 11: Disbursement of Accrued Sick Leave Upon Separation

An unclassified officer or employee shall not receive payment, directly or in kind, for any accrued sick leave remaining at the time of their termination from unclassified service.

SECTION 12: Continuance of Annual and Sick Leave

An unclassified officer or employee shall receive credit for all accrued unpaid annual leave and all unused sick leave upon re-employment by the state in the unclassified service within a period of five (5) years from date of their termination from state service if the officer or employee's re-employment occurs during the effective period of this Order.

SECTION 13: Compensatory Leave

A. Compensatory leave shall not be earned by the following persons:

1. Unclassified appointees;
2. Student employees, as defined under the Civil Service Rules;
3. Temporary, intermittent, or seasonal employees;
4. Members of boards, commissions, or authorities;
5. The executive director or equivalent chief administrative officer of all boards, commissions, and authorities operating within the executive branch who are appointed by a board, commission, or authority;
6. Other officers of the state who are appointed by the governor, including members of boards, commissions, and/or authorities; and
7. Part-time employees of the Governor's Executive Office.

B. Compensatory leave may be earned when an appointing authority, or the appointing authority's designee, requires an unclassified officer or employee in a compensatory leave earning position to work on a holiday or at a time that the officer or employee is not regularly required to be on duty. At the discretion of the appointing authority, compensatory leave may be granted for such overtime hours worked outside the regularly assigned work schedule or on holidays. However, officers or employees exempt from the FLSA shall be compensated for such overtime in accordance with the FLSA.

C. No unclassified officer or employee who sets his own work schedule shall be eligible to earn compensatory leave. However, for overtime work which the appointing authority judges to be extraordinary and which the appointing authority closely monitors, the appointing authority may grant compensatory leave to such an unclassified officer or employee.

D. If an appointing authority permits the earning of compensatory leave to an FLSA-exempt unclassified officer or employee, then the amount of such leave shall be equal to, and not in excess of, the number of extra hours such an officer or employee is required to work.

E. When earned, compensatory leave shall be promptly credited to the unclassified officer or employee and, upon the approval of the appointing authority or the

appointing authority's designee, it may be used by the officer or employee at a future time.

SECTION 14: Use and Disbursement of Compensatory Leave While in Service

A. An unclassified officer or employee who is not exempt from the FLSA shall be paid in cash for any overtime hours worked in excess of the maximum balance allowed by the FLSA.

B. At the discretion of the appointing authority, an unclassified officer or employee may be paid in cash for any compensatory leave earned at the hour for hour rate in excess of three hundred sixty (360) hours. However, an appointing authority, with approval of the commissioner of administration, may authorize cash payments for any compensatory hours earned by officers or employees holding non-management disaster recovery related positions.

C. An appointing authority may require an unclassified officer or employee to use their earned compensatory leave at any time.

SECTION 15: Disbursement of Accrued Compensatory Leave Upon Separation

A. When an unclassified officer or employee transfers without a break in service to another department within state service, at the discretion of the new appointing authority, the new department may credit accrued compensatory leave to the transferring officer or employee.

B. When the unclassified officer or employee, who is not exempt from the FLSA, separates from state service or transfers from the department in which the officer or employee earned compensatory leave to a department not crediting the officer or employee with the accrued balance of compensatory leave, the accrued compensatory leave shall be paid at the higher of the following rates:

1. The average regular rate of pay received by the officer or employee during the last three (3) years of his or her employment; or

2. The final regular rate of pay received by the officer or employee.

C. When an unclassified officer or employee, who is exempt from the FLSA, separates from state service or transfers from the department in which the officer or employee earned compensatory leave to a department not crediting the officer or employee with the accrued balance of compensatory leave, the accrued compensatory leave, if paid, shall be paid at the higher of the following rates:

1. The average regular rate of pay received by the officer or employee during the last three (3) years of his or her employment; or

2. The final regular rate of pay received by the officer or employee.

SECTION 16: Special Leave

A. An unclassified officer or employee who is serving in a position that earns annual and sick leave shall be given time off, without loss of pay, annual leave, or sick leave when:

1. Performing state or federal grand or petit jury duty;

2. Appearing as a summoned witness before a court, grand jury, or other public body or commission;

3. Performing emergency civilian duty in relation to national defense;

4. Voting in a primary, general, or special election which falls on the officer or employee's scheduled work day, provided not more than two (2) hours of leave shall be allowed an officer or employee to vote in the parish of employment, and not more than one (1) day of leave shall be allowed an officer or employee to vote in another parish;

5. Participating in a state civil service examination on a regular work day, or taking a required examination pertinent to the officer or employee's state employment before a state licensing board;

6. The appointing authority determines an act of God prevents the performance of the duties of the officer or employee;

7. The appointing authority determines that, due to local conditions or celebrations, it is impracticable for the officer or employee to work in the locality;

8. The officer or employee is ordered to report for a pre-induction physical examination incident to possible entry into the armed forces of the United States;

9. The officer or employee is a member of the National Guard and is ordered to active duty incidental to a local emergency, an act of God, a civil or criminal insurrection, a civil or criminal disobedience, or a similar occurrence of an extraordinary and emergency nature which threatens or affects the peace or property of the people of the state of Louisiana or the United States;

10. The officer or employee is engaged in the representation of a pro-bono client in a civil or criminal proceeding pursuant to an order of a court of competent jurisdiction; and/or

11. The officer or employee is a current member of Civil Air Patrol and, incident to such membership, is ordered to perform duty with troops or participate in field exercises or training, except that such leave shall not exceed fifteen (15) working days in any one (1) calendar year and shall not be used for unit meetings or training conducted during such meetings.

B. At the discretion of their appointing authority, an unclassified officer or employee who is not serving in a position which earns annual or sick leave, but who is regularly employed by the state of Louisiana in the executive branch within the meaning of La. R.S. 23:965(B) and who is called to serve or is serving on a state or federal grand or petit jury during regular tour of duty hours, may, in conjunction with the provisions of La. R.S. 23:965(B), be granted a leave of absence without loss of pay or use of accrued leave for a period of up to twelve (12) days per year.

SECTION 17: Military Leave

A. Military Leave With Pay

1. An unclassified officer or employee serving in a position that earns annual and sick leave who is a member of a reserve component of the armed forces of the United States and called to duty for military purposes, or who is a member of a National Guard unit called to active duty as a result of a non-local or non-state emergency, shall be granted a leave of absence from a state position without loss of pay or deduction of leave for a period not to exceed fifteen (15) working days per calendar year (hereafter "military leave with pay"). In addition, an appointing authority may grant annual leave, compensatory leave, leave without pay, or any combination thereof, for a period in excess of fifteen (15)

working days per calendar year, in accordance with this Order and/or as required by state and/or federal law.

2. An unclassified officer or employee who is a member of a reserve competent of the armed forces of the United States or a National Guard unit, ordered and/or called to duty for military purposes, shall give prompt notice of the duty to their appointing authority, or the appointing authority's designee. Advanced notice is not required when precluded by military necessity, or otherwise impossible or unreasonable.

3. An unclassified employee that qualifies for leave under this Section shall accrue annual and sick leave as they would if they had not been absent for military training or military active duty.

B. The provisions of this Subsection apply to employees who are called to active duty and are on Leave Without Pay by choice or because all annual and/or compensatory leave has been exhausted. The provisions of this Section shall not apply to employees on "inactive duty for training" (weekend drills).

1. When Military Leave with Pay has been exhausted, an employee whose military base pay is less than his state base pay shall be paid the difference between his military base pay and his state base pay in his regular position. Such payment shall be made on the same frequency and manner as the employee's regular state pay, unless other voluntary arrangements are made. Employees receiving the pay differential shall provide to agency officials any documentation appropriate to ensure the payment amount is calculated correctly. Employees who choose to use their annual leave during their period of military absence shall not be eligible for receipt of the pay differential.

2. Employees shall continue to accrue sick and annual leave for the entire period of service, beginning the date of the service. Leave shall be accrued on the same basis as though the employee had not been activated. Leave earned shall be credited to the employee upon his return from active duty.

3. Employees who are on Leave Without Pay shall receive, each calendar year, the full 15-days of Military Leave with Pay provided for in Subsection A. The pay differential allowed shall be suspended until the 15-day Military Leave with Pay period is exhausted and the employee returns to Leave Without Pay status.

SECTION 18: Other Leave

An unclassified officer or employee serving in a position that earns annual and sick leave may be eligible to use the following additional types of leave:

A. **Optional Leave with Pay:** An unclassified officer or employee who is absent from work due to a disability for which the officer or employee is entitled to receive worker's compensation benefits, may use accrued sick or annual leave to receive combined leave and worker's compensation payments equal to, and, in an amount not to exceed, the officer or employee's regular salary.

B. **Law Enforcement Disability Leave:** When an unclassified officer or employee in law enforcement becomes disabled while in the performance of a duty of a hazardous nature which results in their being unable to perform their usual or normal duties, the disabled officer or

employee's appointing authority may, with the approval of the commissioner of administration, grant the disabled officer or employee a leave of absence with full pay during the period of such disability without charge against accrued sick or annual leave, provided the officer or employee pays to the employing department all amounts of weekly worker's compensation benefits received by the officer or employee during that period of leave with full pay.

C. **Funeral Leave:** An unclassified officer or employee may, at the discretion of the appointing authority, be granted leave without loss of pay, or use of accrued leave to attend the funeral, burial, or last rites of a spouse, parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, mother-in-law, father-in law, grandparent, grandchild, or any other person that the officer or employee's appointing authority deems appropriate, provided such leave shall not exceed a period of two (2) days for any single occurrence. Whenever possible, prior notice of the need to take such leave shall be given by the officer or employee to the appointing authority. At all other times, the officer or employee shall give notice of the need to take such leave at the time it is taken.

D. Educational Leave:

1. An appointing authority may grant an unclassified officer or employee educational leave without pay for an approved educational purpose, for a maximum period of twelve (12) months, in accordance with the rules developed by the commissioner of administration. Consecutive periods of leave without pay may be granted to the officer or employee by the appointing authority.

2. Upon the approval of the commissioner of administration and in accordance with the rules developed by the commissioner of administration, an appointing authority may grant an unclassified officer or employee educational leave with pay for a maximum period of thirty (30) calendar days during one (1) calendar year. Upon the approval of the commissioner of administration and in accordance with the rules developed by the commissioner of administration, an appointing authority may grant an unclassified officer or employee educational leave with pay for a maximum of ninety (90) calendar days during one (1) calendar year if, in addition to the general prerequisites necessary for qualification for educational leave with pay, the educational instruction or training to be taken by the officer or employee is also necessary to, or will substantially aid, the administration of the state agency.

3. In accordance with the rules developed by the commissioner of administration, an appointing authority may grant a stipend to an unclassified officer or employee who has been granted educational leave if:

- a. funds are available for such purposes,
- b. the commissioner of administration approves the stipend, and
- c. the commissioner of administration finds the stipend will be used for a proper, designated purpose and its proper use is clearly supported with appropriate documentation.

SECTION 19: Leave of Absence Without Pay

A. An appointing authority may extend a leave of absence without pay to an unclassified officer or employee

for a period not to exceed one (1) year, provided that such leave shall not prolong the period of the officer or employee's appointment or employment in state service.

B. If an unclassified officer or employee fails to report for, or refuses to be restored to, duty in pay status on the first working day following the expiration of an approved leave of absence without pay, or at an earlier date upon reasonable and proper notice from the appointing authority or the appointing authority's designee, then the officer or employee shall be considered as having deserted their position of appointment or employment.

C. At the discretion of the appointing authority, or at the request of the unclassified officer or employee, a period of leave of absence without pay that has been extended to an officer or employee may be credited, provided such curtailment is in the best interest of state service and reasonable and proper notice thereof is furnished to the officer or employee.

SECTION 20: Holidays

A. Holidays shall be observed as provided in R.S. 1:55 and by proclamation issued by the governor.

B. An unclassified officer or employee in state service in a compensatory leave earning or part-time position may, at the discretion of their appointing authority, receive additional compensation when required to work on an observed holiday.

C. When an unclassified officer or employee is on leave without pay during the period immediately preceding and following an observed holiday, that officer or employee shall not receive compensation for that holiday unless the holiday is worked by the officer or employee.

SECTION 21: Record Keeping

A. Leave records shall be maintained for all unclassified appointees. Daily attendance and leave records shall be maintained for all other unclassified officers and employees who are eligible to accrue or use annual, sick and/or compensatory leave.

B. An accrued balance of unused annual, compensatory, and/or sick leave shall be held in abeyance for an officer or employee who becomes ineligible to earn and/or use the particular type of leave pursuant to the terms of this Order. The accrued balance(s) shall be available to the officer or employee, in accordance with the provisions of this Order, when he or she again becomes eligible to earn and/or use said leave, or when he or she separates from state service.

SECTION 22: Compliance

A. All departments, commissions, boards, agencies, and officers or employees of the state, or any political subdivision thereof within the executive branch of state government effected by this Order shall comply with, be guided by, and cooperate in the implementation of the provisions of this Order.

B. The head of each department shall be responsible for deciding the extent to which the discretionary provisions of this Order shall be implemented within their department.

SECTION 23: Effective Dates

Unless specifically designated otherwise, upon signature of the Governor, the provisions of this Order shall be applicable to all current and future unclassified officers and employees and, as to current officers and employees, be retroactive to noon on January 11, 2016. Any rights accrued

to unclassified officers and employees prior to December 31, 2015, pursuant to the provisions of Executive Order No. BJ 12-02, shall not be adversely affected by the retroactive application of this Order.

A. The rules and policies established by this Order shall be applicable to all officers and employees in the unclassified service of the executive branch of the state of Louisiana with the exception of elected officials and their officers and employees, and the officers and employees of a system authorized by the Louisiana Constitution or legislative act to manage and supervise its own system. Elected officials of the executive branch may adopt the rules and policies set forth in this Order to govern the unclassified officers and employees within their department.

B. Nothing in this Order shall be applied in a manner which violates, or is contrary to, the Fair Labor Standards Act (hereafter "FLSA"), the Family and Medical Leave Act, or any other applicable federal or state law, rule, or regulation.

The provisions of this Order shall remain in effect until amended, modified, terminated, or rescinded by the governor or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 5th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#083

EXECUTIVE ORDER JBE 16-49

Office of Louisiana Youth for Excellence

WHEREAS, the citizens of the State of Louisiana face many challenges, including high rates of teenage pregnancy and sexually transmitted infections;

WHEREAS, many Louisiana adolescents remain poorly informed about possible consequences of being sexually active, including pregnancy and sexually transmitted infections; and

WHEREAS, access to abstinence based educational programs, mentoring and counseling may encourage Louisiana's youth to abstain from sexual activity.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Office of Louisiana Youth for Excellence (LYFE) is reestablished and recreated within the Executive Department, Office of the Governor, Office of Community Programs;

SECTION 2: The goals of the Office of LYFE shall include, but are not limited to, the following:

A. Promoting positive youth development by teaching goal setting, leadership development, character building, and integrity in school settings, after school programs and community-based programs;

B. Mitigating the effects of health-risk behaviors for the youth of Louisiana;

C. Reducing the incidence of sexual activity among the youth of Louisiana;

D. Reducing the rate of sexually transmitted infections among the youth of Louisiana;

E. Lowering the pregnancy rate among the youth of Louisiana; and

F. Lowering the number of high-school drop-outs related to health-risk behaviors in Louisiana.

SECTION 3: The duties of the Office of LYFE shall include, but are not limited to the following:

A. Applying for and receiving funding for the development and administration of the Office of LYFE from public and private sources;

B. Providing youth with support to build character, integrity, and excellence by promoting positive messages of youth development and educating as to the dangers of health-risk behaviors;

C. Providing parents with information supporting their role as the primary educator of family values;

D. Coordinating with appropriate organizations and other public agencies to achieve the goals outlined in Section 2;

E. Promoting character qualities and human skills that promote responsible and productive values in children; and

F. Developing an aggressive campaign targeting adolescents ages 12-19 and parents that will build awareness of the consequences of health-risk behaviors and reinforce positive youth development.

SECTION 4: The Office of LYFE shall be directed by an executive director who is designated by and serves at the pleasure of the Governor. The executive director shall be responsible for administering, overseeing, and evaluating the programs of the Office of LYFE in a manner which facilitates the accomplishment of the program's duties and goals, as set forth in Sections 2 and 3.

The executive director, upon request, shall submit an annual comprehensive report to the Governor which addresses the fulfillment of the Office of LYFE's goals, as set forth in Section 2 of this Order, and its duties, as defined in Section 3 of this Order.

SECTION 5: The Office of LYFE shall be permitted staff and resources to fulfill the goals, duties, and responsibilities specified in this Order. It shall be permitted to accept the efforts of volunteers in accordance with state law.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized to cooperate with the Office of LYFE in implementing the provisions of this Order.

SECTION 7: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the City of Baton Rouge, on this 5th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#084

EXECUTIVE ORDER JBE 16-50

Office of Community Programs

WHEREAS, the Office of the Governor has many agencies and/or divisions within it which provide a wide range of services for the citizens and local governments of the State of Louisiana;

WHEREAS, citizens of the State of Louisiana benefit from centralized efforts to effectively coordinate community outreach and the delivery of community programs; and

WHEREAS, the Office of Community Programs, within the Office of the Governor, was originally established by executive order to coordinate the operation and delivery of services provided by these agencies and/or divisions.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Office of Community Programs ("Office") is reestablished and recreated within the executive department, Office of the Governor.

SECTION 2: The Office shall be composed of the following agencies and divisions of the Office of the Governor:

A. Office of Disability Affairs (La. R.S. 46:2581 *et seq.*);

B. Statewide Independent Living Council (Executive Order No. JBE 16-14);

C. Office of Indian Affairs (La. R.S. 46:2301 *et seq.*);

D. Louisiana State Interagency Coordinating Council for Child Net, sometimes referred to as "Early Steps" (La. R.S. 17:1979 and La. R.S. 36:4(R));

E. Louisiana Youth For Excellence (Executive Order No. JBE 16-49);

F. Drug Policy Board (La. R.S. 49:219.1 *et seq.*);

G. Office on Women's Policy (La. R.S. 46:2521 *et seq.*);

H. Children's Cabinet (La. R.S. 46:2602 *et seq.*);

I. Governor's Council on Homelessness (Executive Order No. JBE 16-22);

J. Louisiana Animal Welfare Commission (La. R.S. 3:2364 *et seq.*); and

K. The Latino Commission (La. R.S. 49:1222 *et seq.*)

SECTION 3: The duties and functions of the Office shall include, but are not limited to, the following:

EXECUTIVE ORDER JBE 16-51

Flags at Half-Staff—Representative Jimmy D. Long, Sr.

A. Coordinating, directing, and monitoring the manner in which the services of the agencies, divisions, and/or programs of the Office of the Governor that are listed in Section 2 and Section 3 of this Order are provided to the citizens and local governments of the State of Louisiana;

B. Promoting and coordinating legislative initiatives that are designed to improve the quantity, quality, and delivery of the state services provided for the benefit of the citizens and local governments of the State of Louisiana;

C. Disseminating information about state services and legislative initiatives to state, federal, and/or private agencies which provide services to the citizens and/or local governments of the State of Louisiana; and

D. Advising the Governor on issues related to services provided through the Office of Community Programs for the benefit of citizens and/or local governments of the State of Louisiana.

SECTION 4: The director and/or executive directors of the agencies, divisions, and/or programs contained within section 2 of this order will report to the Deputy Chief of Staff, Programs and Planning. The Deputy Chief of Staff, Programs and Planning, shall be the appointing and budget authority for the Office of Community Programs. The Coordinator of Programs and Planning will assist the Deputy Chief of Staff and provide program and operational coordination to ensure the duties and functions of section 3 of this order are successfully performed.

SECTION 5: All programs contained within Section 2 of this Order are required to maintain records of all contract, loan and/or grant sources that are issued and/or awarded by the agencies, divisions, and/or programs of the Office of the Governor.

SECTION 6: Support staff, facilities, and resources for the Office shall be provided by the Office of the Governor.

SECTION 7: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and/or directed to cooperate with the Office in the provisions of this Order.

SECTION 8: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 5th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#085

WHEREAS, former state representative Jimmy D. Long, Sr. died on August 9, 2016, at the age of 84;

WHEREAS, a seven-year veteran of the U.S. Navy, Representative Long was a business owner and cattleman in Natchitoches for more than a half-century;

WHEREAS, Representative Long served eight consecutive terms in the House of Representatives from 1968 through 2000, during which time he served as chairman of the House Education Committee for 16 years and also held membership on the House Appropriations Committee and the Joint Legislative Budget Committee;

WHEREAS, he received wide respect from his colleagues in the House of Representatives for his commitment to public service, personal integrity and leadership abilities, where he held the title “Dean of the Legislature”;

WHEREAS, in 2001, Representative Long was appointed to sit on the University of Louisiana System Board of Supervisors, where he served for 15 years, including two years as board chair;

WHEREAS, he received many awards throughout his life, a few of which include recognition by the Shreveport Times as one of the “100 Most Influential People of the Century” in Northwest Louisiana; a Lifetime Service Award in Education from the State Board of Regents for Higher Education; induction into the Louisiana Political Hall of Fame; the Friends of Education Award from the Louisiana Association of Educators; named a Louisiana Legend by the Friends of Louisiana Legend by the Friends of Louisiana Public Broadcasting; and the G.O. McGuffie Public Servant Award from the Louisiana Moral and Civic Foundation;

WHEREAS, while he was known for his commitment to Northwestern State University and the Louisiana School for Math, Science and the Arts, he was widely known as an expert in the field of education law, respected not only for his knowledge and insight, but also for his ability to succinctly explain and articulate issues; and

WHEREAS, Representative Long’s passion for public service and his commitment to improving education within the State of Louisiana will be missed, but his legacy will be felt for generations.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect and to honor Representative Jimmy D. Long, Sr., the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol on Friday, August 12, 2016.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, August 12, 2016.

IN WITNESS WHEREOF, I have set my hand
officially and caused to be affixed the Great Seal of
Louisiana, at the Capitol, in the City of Baton Rouge, on this
10th day of August, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1608#086

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Boll Weevil Eradication Commission

Maintenance and Inspection Fee—Cotton Producers (LAC 7:XV.Chapter 3)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the enabling authority of R.S. 3:1604.1, R.S. 3:1652, and R.S. 3:1655, notice is hereby given that the Department of Agriculture and Forestry is renewing an Emergency Rule to amend LAC 7:XV.301, 303, and 321. The amendments to these rules reduce the maintenance inspection fee paid by cotton producers from \$6 per acre to \$5 per acre.

Current cotton commodity prices are the lowest seen in over 10 years, thus significantly reducing farm income for cotton producers. This Declaration of Emergency is required in order to provide cotton producers in the state of Louisiana some relief in the input costs necessary to produce a cotton crop. This fee reduction was originally adopted by Emergency Rule at LR 42:511 (April 20, 2016) because cotton producers had to pay the maintenance inspection fee by July 15, 2016 and there was not sufficient time to amend the rules via the permanent rulemaking process prior to July 15, 2016.

A Notice of Intent to make the Rule permanent was published at LR 42:1134 (July 20, 2016). This second Emergency Rule is necessary to avoid a lapse in the amendments to LAC 7:XV.301, 303, and 321 prior to the permanent Rule becoming effective. This Emergency Rule shall have the force and effect of law on August 1, 2016, and will remain in effect 120 days or until the permanent Rule is finalized.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§301. Maintenance Inspection Fee

A. In accordance with R.S. 3:1655(D), the state entomologist is authorized to assess fees to defray the costs of inspections or the issuance of certificates or permits for the shipment of agricultural products, commodities, packaging, or equipment. There is hereby established a fee for the inspection and certification of cotton for the presence of the boll weevil to ensure the marketability of cotton in commerce and maintain Louisiana's boll weevil-free status. The fee shall be \$5 per acre for each acre of cotton planted in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1652, and 1655.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, amended LR 40:1517 (August 2014), LR 42:

§303. Definitions Applicable to Boll Weevil

A. The words and terms defined in R.S. 3:1603 are applicable to this Chapter.

B. The following words and terms are defined for the purposes of this Chapter.

* * *

Maintenance Inspection Fee—the fee paid by cotton producers to finance, in whole or in part, a program to inspect cotton for the presence of the boll weevil in the state and to issue certificates or permits in accordance with R.S. 3:1655(D). The charge to the producer is calculated at the rate of \$5 per acre for each acre of cotton planted in the state.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1652, and 1655.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 23:195 (February 1997), LR 37:2583 (September 2011), LR 40:1517 (August 2014), LR 42:

§321. Maintenance Inspection Fees, Payment and Penalties

A. The annual maintenance inspection fee on cotton producers in the Louisiana eradication zone shall be \$5 per acre for each acre of cotton planted in the state. Each cotton producer shall pay his annual maintenance inspection fee directly to the department no later than July 15 or final certification with the FSA for that growing season, whichever is later. The signed and completed cotton acreage reporting and payment form with FSA Form 578 attached shall be submitted with the annual payment of the maintenance inspection fee.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1609, 1610, 1612, 1652, and 1655.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 29:859 (June 2003), LR 30:1142 (June 2004), LR 30:2443 (November 2004), LR 37:2583 (September 2011), LR 40:1519 (August 2014); LR 42:

Mike Strain, DVM
Commissioner

1608#024

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Animal Health and Food Safety

Turtle Eggs and Turtles—International Shipments (LAC 7:XXI.1909)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority set forth in R.S. 3:2358.2 and 3:2358.10, notice is hereby given that the Department of Agriculture and Forestry is, by Emergency Rule, amending LAC 7:XXI.1909 regarding requirements for international shipments of turtles.

Currently, LAC 7:XXI.1909 requires a health certificate and certified laboratory report accompany all international shipments, irrespective of whether the country of destination requires the same. Louisiana is the only state in the nation with these exit requirements in lieu of following the entry requirements for the country of destination. The current regulation is overly burdensome and adds additional cost to Louisiana turtle farmers attempting to ship their commodities internationally. By amending LAC 7:XXI.1909 to require a health certificate and certified laboratory report when required by the country of destination, instead of for every international shipment, Louisiana turtle farmers will no longer be subject to an unfair trade disadvantage.

This Rule shall have the force and effect of law on August 1, 2016, and will remain in effect 120 days, unless renewed by the commissioner of agriculture and forestry, or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Animals and Animal Health

Chapter 19. Turtles (Formerly Chapter 23)

§1909. Movement of Turtle Eggs and Turtles (Formerly §2307)

A. The department shall regulate the movement of turtles or turtle eggs by licensed pet turtle farmers and procedures shall include, but not be limited to, shipment into local and international commerce, as well as shipment to certified laboratories.

1. All turtles or eggs leaving a licensed turtle farm bound for a certified laboratory shall be accompanied by a certificate of inspection. A health certificate from a Louisiana licensed veterinarian stating that the turtles and/or eggs originated from a Louisiana licensed pet turtle farm shall accompany all shipments into international commerce if required by the country of destination. Each health certificate shall identify the final destination of the turtles or eggs they accompany.

2. - 6. ...

7. Turtles or eggs intended for international commerce shall be conspicuously marked "For Export Only" on the outside of the shipping package. Turtles or eggs intended for international commerce shall be accompanied by a health certificate and/or a certified laboratory report if either is required by the country of destination.

8. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1569 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:980 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 42:

Mike Strain, DVM
Commissioner

1608#023

DECLARATION OF EMERGENCY

Department of Children and Family Services Licensing Section

Residential Home (LAC 67:V.Chapter 71)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend LAC 67:V, Subpart 8, Chapter 71, Child Residential Care, Class A. This Emergency Rule shall be effective August 1, 2016 and shall remain in effect for a period of 120 days.

Pursuant to Section 2 of Act 502 of the 2016 Regular Legislative Session, the department shall adopt rules in accordance with the Administrative Procedure Act effective August 1, 2016. The department considers emergency action necessary in order to revise the child residential licensing standards to incorporate standards to protect the safety and well-being of children residing in child residential facilities with their parents.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 8. Residential Licensing

Chapter 71. Child Residential Care, Class A

§7101. Purpose

A. It is the intent of the legislature to protect the health, safety, and well-being of the children and residents of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of chapter 14 of title 46 of the *Louisiana Revised Statutes* to establish statewide minimum standards for the safety and well-being of children and residents, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to ensure protection of all individuals under care by specialized providers and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:804 (April 2010), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7103. Authority

A. Legislative Provisions

1. The state of Louisiana, Department of Children and Family Services, is charged with the responsibility of

developing and publishing standards for the licensing of residential homes.

a. The licensing authority of the Department of Children and Family Services is established by R.S. 46:1401 et seq., and R.S. 46:51 which mandate the licensing of all residential homes. A residential home is any place, facility, or home operated by any institution, society, agency, corporation, person or persons, or any other group to provide full-time care, 24 hours per day, for more than four children, who may remain at the facility in accordance with R.S. 46:1403.1, who are not related to the operators and, except as provided in this Subparagraph, whose parents or guardians are not residents of the same facility, with or without transfer of custody. However, a child of a person who is a resident of a residential home may reside with that parent at the same facility. The age requirement may be exceeded as stipulated in R.S. 46:1403.1 which states that, "Notwithstanding any other provision of law to the contrary, including but not limited to R.S. 46:1403(1), a child housed at a residential home may stay at such home for a period not to exceed six months beyond his eighteenth birthday to complete any educational course that he began at such facility, including but not limited to a general education development (GED) course, and any other program offered by the residential home". In addition, the R.S. 46:1403.1(B) further stipulates that, "Notwithstanding Subsection A of this Section and any other provision of law to the contrary, including but not limited to R.S. 46:1403(A), a child housed at a residential home that does not receive Title IV-E funding pursuant to 42 USC 670 et seq., may remain at such home until his twenty-first birthday to complete any educational course that he began at such facility, including but not limited to a General Education Development course, and any other program offered by the residential home."

B. Penalties. As mandated by R.S. 46:1421, whoever operates as a specialized provider as defined in R.S. 46:1403, without a valid license issued by the department shall be fined not less than \$1,000 for each day of such offense.

C. Waiver Request

1. The secretary of the department, in specific instances, may waive compliance with a standard, as long as the health, safety, and well-being of the staff and/or the health, safety, rights, or well-being of residents or children are not imperiled. Standards shall be waived only when the secretary determines, upon clear and convincing evidence, that the economic impact is sufficient to make compliance impractical for the provider despite diligent efforts and when alternative means have been adopted to insure that the intent of the regulation has been carried out.

2. Application for a waiver shall be made in writing and shall include:

- a. a statement of the provisions for which a waiver is being requested; and
- b. an explanation of the reasons why the provisions cannot be met and why a waiver is being requested.

3. The request for a waiver will be answered in writing and approvals will be maintained on file by the requesting provider and the department. A waiver is issued at the discretion of the secretary and continues in effect at her pleasure. It may be revoked by the secretary at any time, either upon violation of any condition attached to it at

issuance, upon failure of any of the statutory prerequisites to issuance of a waiver (i.e., the cost of compliance is no longer so great as to be impractical or the health or safety of any staff or any child or resident is imperiled), or upon her determination that continuance of a waiver is no longer in the best interest of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:805 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 39:67 (January 2013), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7105. Definitions

A. As used in this Chapter:

Abuse—any one of the following acts which seriously endangers the physical, mental, or emotional health of the resident:

a. the infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the resident by a parent or any other person;

b. the exploitation or overwork of a resident by a parent or any other person; and

c. the involvement of the resident in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the resident's sexual involvement with any other person or of the resident's involvement in pornographic displays or any other involvement of a resident in sexual activity constituting a crime under the laws of this state.

Affiliate—

a. with respect to a partnership, each partner thereof;

b. with respect to a corporation, each officer, director and stockholder thereof;

c. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

d. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

e. director of any such.

Age- or Developmentally-Appropriate Activities or Items—activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

Associated Person—a provider's owner, officers, board members, volunteers, and/or any other such person who may

be involved in some capacity with the work of the provider other than the provider's employees.

Behavior Support—the entire spectrum of activities from proactive and planned use of the environment, routines, and structure of the particular setting to less restrictive interventions such as positive reinforcement, verbal interventions, de-escalation techniques, and therapeutic activities that are conducive to each resident's development of positive behavior.

Behavior Support Plan—a written document that addresses the holistic needs of the resident and includes the resident's coping strategies, de-escalation preferences, and preferred intervention methods.

Child—a person under 18 years of age who resides in a residential home with his parent who is a resident of the home with or without transfer of custody.

Complaint—an allegation that any person is violating any provisions of these standards or engaging in conduct, either by omission or commission, that negatively affects the health, safety, rights, or welfare of any child or resident who is residing in a residential home.

Criminal Background Check—a review of any and all records containing any information collected and stored in the criminal record repository of the Federal Bureau of Investigation, the state Department of Public Safety and Corrections, or any other repository of criminal history records, involving a pending arrest or conviction by a criminal justice agency, including, but not limited to, child abuse crime information, conviction record information, fingerprint cards, correctional induction and release information, identifiable descriptions and notations of convictions; provided, however, dissemination of such information is not forbidden by order of any court of competent jurisdiction or by federal law.

DAL—the Division of Administrative Law.

Debriefing—a process by which information is gathered from all involved parties after the use of personal restraints or seclusion that includes an evaluation of the incident, documentation detailing the events leading up to the incident, and ways to avoid such incidents in the future.

Department (DCFS)—Department of Children and Family Services.

Direct Care Worker—a person counted in the resident or child/staff ratio, whose duties include the direct care, supervision, guidance, and protection of a resident or child. This does not include a contract service provider who provides a specific type of service to the operation for a limited number of hours per week or month or works with one particular resident or child. This may include staff such as administrative staff that have the required background clearances and appropriate training that may serve temporarily as direct care staff.

Direct Supervision—the function of observing, overseeing, and guiding a resident or child and/or group of residents or children. This includes awareness of and responsibility for the ongoing activity of each individual and being near enough to intervene if needed. It requires physical presence, accountability for their care, knowledge of activity requirements, and knowledge of the individual's abilities and needs.

Discipline—the ongoing positive process of helping children or residents develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

Disqualification Period—the prescriptive period during which the department shall not process an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Documentation—written evidence or proof, signed and dated by the parties involved (director, residents, staff, etc.), and available for review.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Employee—all full or part-time paid or unpaid staff who perform services for the residential home and have direct or indirect contact with children or residents at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper.

Facility—residential home as defined in R.S. 46:1403.

Human Service Field—the field of employment similar or related to social services such as social work, psychology, sociology, special education, rehabilitation counseling, child development, guidance and counseling, divinity, education, juvenile justice and/or corrections through which a person gains experience in providing services to the public and/or private clients that serves to meet the years of experience required for a job as specified on the job description for that position.

Independent Contractor—any person who renders professional, therapeutic, or enrichment services to children or residents such as educational consulting, athletic, or artistic services within a facility, whose services are not integral to either the operation of the facility or to the care and supervision of residents or children. Independent contractors may include but are not limited to dance instructors, gymnastic or sports instructors, computer instructors, speech therapists, licensed health care professionals, state-certified teachers employed through a local school board, art instructors, and other outside contractors. A person shall not be deemed an independent contractor if he is considered a staff of the facility.

Individual Owner—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of acquets and gains.

Infant—a child that has not yet reached his first birthday.

Injury of Unknown Origin—an injury where the source of the injury was not observed by any person or the source of the injury could not be explained by the resident and the

injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma).

Legal Guardian—the caretaker in a legal guardianship relationship. This could be the parent or any child placing agency representative.

Legal Guardianship—the duty and authority to make important decisions in matters having a permanent effect on the life and development of the resident or child and the responsibility for the resident's or child's general welfare until he reaches the age of majority, subject to any rights possessed by the parents. It shall include the rights and responsibilities of legal custody.

License—

a. any license issued by the department to operate a facility as defined in R.S. 46:1403.

Licensing Section—DCFS Licensing Section.

Lifebook—a record of a resident's or child's life which chronicles accomplishments, milestones, and important people in their lives through pictures, words, artwork, and memorabilia.

Mandated Reporter—professionals who may work with children or residents in the course of their professional duties and who consequently are required to report all suspected cases of abuse and neglect. This includes any person who provides training and supervision of a child or resident, such as a public or private school teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child or resident, or any other person made a mandatory reporter under Article 603 of the Children's Code or other applicable law.

Medication—all drugs administered internally and/or externally, whether over-the-counter or prescribed.

Neglect—the refusal or unreasonable failure of a parent or caretaker to supply the child or resident with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of an individual under the age of 18, as a result of which the individual's physical, mental, or emotional health and safety is substantially threatened or impaired.

Owner or Operator—the individual or juridical entity who exercises ownership or control over a residential home, whether such ownership/control is direct or indirect.

Ownership—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

a. *Direct Ownership*—when a natural person is the immediate owner of a residential home i.e., exercising control personally rather than through a juridical person.

b. *Indirect Ownership*—when the immediate owner is a juridical entity.

Personal Restraint—a type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a resident's body in order to control physical

activity. Personal restraint includes escorting, which is when a staff uses physical force to move or direct a resident who physically resists moving with the staff to another location.

Program Director—the person with authority and responsibility for the on-site, daily implementation and supervision of the overall facility's operation.

Provider—any facility, organization, agency, institution, program, or person licensed by the department to provide services to children or residents which includes all owners or operators of a facility, including the director of such facility.

Reasonable and Prudent Parent Standard—standard that a caregiver shall use when determining whether to allow a resident or child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities. The standard is characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a resident or child while at the same time encouraging the emotional and developmental growth of the resident or child.

Reasonable and Prudent Parent Training—training that includes knowledge and skills relating to the reasonable and prudent parent standard for the participation of the resident or child in age or developmentally appropriate activities. This includes knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a resident or child and knowledge and skills relating to applying the standard to decisions such as whether to allow the resident or child to engage in social, extracurricular, enrichment, cultural, and social activities. Activities include sports, field trips, and overnight activities lasting one or more days. Also included is knowledge and skills in decisions involving the signing of permission slips and arranging of transportation for the resident or child to and from extracurricular, enrichment, and social activities.

Reasonable Suspicion—suspicion based on specific and articulable facts which indicate that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor resulting in a justified and/or valid finding currently recorded on the state central registry.

Related or Relative—a natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Resident—an individual who receives full time care at a residential home and whose parents do not live in the same facility nor is the individual related to the owner or operator of the facility.

Residential Home—any place, facility, or home operated by any institution, society, agency, corporation, person or persons, or any other group to provide full-time care, 24 hours per day, for more than four children, who may remain at the facility in accordance with R.S. 46:1403.1, who are not related to the operators and, except as provided in this Paragraph, whose parents or guardians are not residents of the same facility, with or without transfer of custody. However, a child of a person who is a resident of a residential home may reside with that parent at the same facility.

Rest Time—period when residents are either asleep or are lying down in their own beds with the intent of going to

sleep. Residents may be reading, listening to music, or other individual quiet activities that promote said sleep time.

Safety Interventions—an immediate time limited plan to control the factor(s) that may result in an immediate or impending serious injury/harm to a resident or child(ren).

Seclusion—the placement of an individual against his or her will in a room where they are not allowed to voluntarily leave.

Service Plan—a written plan of action for residents usually developed between the family, resident, social worker, and other service providers, that identifies needs, sets goals, and describes strategies and timelines for achieving goals.

Staff—all full or part-time paid or unpaid staff who perform services for the residential home and have direct or indirect contact with children or residents at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper.

State Central Registry—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of an individual under the age of 18 by DCFS.

Substantial Bodily Harm—physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

Supervision—the function of observing, overseeing, and guiding a resident or child and/or group of residents or children. This includes awareness of and responsibility for the ongoing activity of each individual and being near enough to intervene if needed. It requires accountability for their care, knowledge of activity requirements, and knowledge of the individual's abilities and needs.

Time-Out—a strategy used to teach individuals to calm themselves, during which a child or resident is not given the opportunity to receive positive reinforcement and/or participate in the current routine or activity until he/she is less agitated.

Type IV License—license held by any public or privately owned residential home.

Unlicensed Operation—operation of a residential home at any location, without a valid, current license issued by the department for that location.

Volunteer—an individual who works at the facility and whose work is uncompensated. This may include students, interns, tutors, counselors, and other non-staff individuals who may or may not work directly with the residents or children.

Waiver—an exemption granted by the secretary of the department from compliance with a standard that will not place the resident or staff member at risk.

Youth—a person not less than 16 years of age nor older than 21 years of age in accordance with R.S. 46:1403.1(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:805 (April 2010), amended by the Department of Children and Family

Services, Division of Programs, Licensing Section, LR 38:976 (April 2012), LR 42:220 (February 2016), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7107. Licensing Requirements

A. General Provisions

1. New buildings shall be designed to appear physically harmonious with the neighborhood in which they are located considering such issues as scale, appearance, density and population. A residential home shall not occupy any portion of a building licensed by another agency. A residential home shall be a self-contained facility. The mixing of differing populations is prohibited.

2. Before beginning operation, it is mandatory to obtain a license from the department.

3. All new construction or renovation of a facility requires approval from agencies listed in Subparagraphs B.2.b-f of this Section and must comply with the Louisiana Uniform Construction Code.

4. In addition all facilities shall comply with the requirements of the Americans with Disabilities Act, 42 USC §12101 et seq. (ADA).

5. Documentation of a satisfactory fingerprint based criminal background check from Louisiana State Police shall be submitted for all owners of a residential home, as required by R.S. 46:51.2 and R.S. 15:587.1. No person with a criminal conviction for, or a plea of guilty or nolo contendere to, any offense included in R.S. 15:587.1, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a residential home. In addition, an owner, or director shall not have a conviction of, or plea of guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense. Effective August 1, 2016, criminal background checks (CBC) shall be dated no earlier than 30 days of the individual being present in the facility or having access to the residents or children. If an individual has previously obtained a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police, such certified copy shall be acceptable as meeting the CBC requirements. If an owner obtains a certified copy of their criminal background check from the Louisiana State Police, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. This certified copy shall be kept on file at the facility. Prior to the one-year expiration of the certified criminal background check, a new fingerprint-based satisfactory criminal background check shall be obtained from Louisiana State Police. If the clearance is not obtained prior to the one-year expiration of the certified criminal background check, the owner is no longer allowed on the premises until a clearance is received. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance:

- a. individual ownership—individual and spouse;
- b. partnership—all limited or general partners and managers as verified on the Secretary of State's website;
- c. church-owned, governmental entity, or university-owned—any clergy and/or board member that is present in the home;

d. corporation—any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:

- i. has unsupervised access to the residents or children in the home;
- ii. is present in the home;
- iii. makes decisions regarding the day-to-day operations of the home;
- iv. hires and/or fires staff including the director;
- v. oversees residential staff and/or conducts personnel evaluations of the staff; and/or
- vi. writes the facility's policies and procedures;

e. corporation—if an owner has less than a 25 percent share in the business and does not perform one or more of the functions listed in §7107.A.5.d, a signed, notarized attestation form is acceptable in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

6. Providers and staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a residential home as defined in R.S. 46:1403.

7. The owner or program director of a residential home shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises of the residential home. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a residential home shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the residential home as required by R.S. 14:91.1.

B. Initial Licensing Application Process

1. An initial application for licensing as a residential home shall be obtained from the department.

Department of Children and Family Services
Licensing Section
P. O. Box 260036
Baton Rouge, LA 70826
Phone: (225) 342-4350
Fax: (225) 219-4363
Web address: www.dcfslouisiana.gov

2. After the residential home's location has been established, a completed initial license application packet for an applicant shall be submitted to and approved by the department prior to an applicant providing services. The completed initial licensing packet shall include:

- a. completed application and non-refundable fee;
- b. current Office of the State Fire Marshal approval for occupancy;
- c. current Office of Public Health, Sanitarian Services approval;
- d. current city fire department approval (if applicable);
- e. city or parish building permit office approval (if applicable);
- f. local zoning approval (if applicable);

g. copy of proof of current general liability and current property insurance for facility;

h. copy of current proof of insurance for vehicle(s) used to transport residents or children of residents;

i. organizational chart or equivalent list of staff titles and supervisory chain of command;

j. verification of experience and educational requirements for the program director;

k. verification of experience and educational requirements for the service plan manager;

l. list of consultant/contract staff to include name, contact info, and responsibilities;

m. copy of program philosophy and goals;

n. list of all staff to include staff's name and position;

o. list of the names and addresses of owners of privately owned agencies;

p. list of the names and addresses of its' members and officers if a corporation, partnership, or association;

q. documentation of a charter, partnership agreement, constitution, articles of association, or bylaws if a corporation, partnership, or association;

r. a floor sketch or drawing of the premises to be licensed;

s. any other documentation or information required by the department for licensure;

t. documentation of a Louisiana State Police fingerprint based satisfactory criminal record check for all staff including all owners and operators of the facility, as required by R.S. 46:51.2 and 15:587.1. CBC shall be dated no earlier than 30 days before the application has been received by the Licensing Section;

u. documentation of completed state central registry disclosure form (SCR 1) noting no justified (valid) finding of abuse and/or neglect for all staff including owners and operators (SCR 1 shall be dated no earlier than 30 days before the application has been received by the Licensing Section) or a determination from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children/youth/residents;

v. current approval from the Department of Education, if educational services will be provided on-site;

w. copy of the completed reasonable and prudent parent authorized representative form;

x. three signed reference letters dated within three months prior to hire for program director attesting affirmatively to his/her character, qualifications, and suitability to manage the program; and

y. three signed reference letters dated within three months prior to hire for service plan manager attesting affirmatively to his/her character, qualifications, and suitability for the position.

3. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will have 45 calendar days to submit the additional requested information. If the department does not receive the additional requested information within the 45 calendar days, the application will be closed and the fee forfeited. After an initial licensing application is closed, an applicant who is still interested in becoming a residential home provider shall submit a new initial licensing packet with a

new initial licensing fee to restart the initial licensing process.

4. Once the department has determined the initial licensing packet is complete, DCFS will attempt to contact the applicant to schedule an initial inspection; however it is the applicant's responsibility to coordinate the initial inspection. If an applicant fails to schedule the initial inspection within 45 calendar days of the notification, the initial licensing application shall be closed and fee forfeited.

5. After an initial licensing application is closed, an applicant who is still interested in becoming a residential home provider shall submit a new initial licensing packet with a new initial licensing fee to restart the initial licensing process.

6. After the completed application and non-refundable fee have been received by the Licensing Section, DCFS will notify the Office of State Fire Marshal, office of city fire department (if applicable), and Office of Public Health that an application for licensure has been submitted. However, it is the applicant's responsibility to request and obtain these inspections and approvals.

C. Initial Licensing Inspection

1. Prior to the initial license being issued to the residential home provider, an initial licensing inspection shall be conducted on-site at the residential home to assure compliance with all licensing standards. The initial licensing inspection shall be an announced inspection. No resident shall be provided services by the residential home provider until the initial licensing inspection has been performed and the department has issued an initial license. If the provider is in operation in violation of the law, the licensing inspection shall not be conducted. In these instances, the application shall be denied and DCFS shall pursue legal remedies.

2. In the event the initial licensing inspection finds the residential home provider is compliant with all licensing laws and standards, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department may issue a license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, extended, revoked, suspended, or terminated.

3. In the event the initial licensing inspection finds the residential home provider is noncompliant with any licensing laws or standards, or any other required statutes, laws, ordinances, rules, or regulations, with the exception of the following standards, the department may deny the initial application:

- a. Office of State Fire Marshal approval;
- b. city fire approval (if applicable);
- c. Office of Public Health approval;
- d. three signed and dated reference letters on the program director dated within the previous three months of hire which should attest affirmatively to his/her character, qualifications, and suitability to manage the program;
- e. documentation of a satisfactory Louisiana State Police fingerprint based criminal record clearance for all staff not previously listed on the staffing sheet in Subparagraph B.2.n of this Section; and
- f. documentation of completed state central registry disclosure forms (SCR 1) noting no justified (valid) finding of abuse and/or neglect for all staff not previously listed on the staffing sheet in Subparagraph B.2.n of this Section or

determination from the Risk Evaluation Panel or Division of Administrative Law noting that the individual does not pose a risk to children/youth/residents.

4. The application shall be denied if the above documentation is not received within 120 calendar days of receipt of the completed initial application packet.

5. When issued, the initial residential home provider license shall specify the licensed bed capacity. Children of residents shall not be counted in the facility's licensed capacity; however the license will note if the provider is licensed to provide services to children of residents.

D. Fees and Notification of Changes

1. All fees are non-refundable and shall be paid by money order, certified check, or electronic payment, if available, made payable to DCFS—Licensing Section.

2. In accordance with R.S 46:1406(F), there shall be a non-refundable fee as prescribed by the department for a license or renewed license, payable to the department with the initial licensing application, CHOL application, CHOW application, and prior to the last day of the anniversary month of the license as listed below, based on capacity.

4 to 6 Residents	7 to 15 Residents	16 or More Residents
\$400	\$500	\$600

NOTE: Children of residents are not counted in the facility's licensed capacity.

3. A non-refundable fee of \$5 is required to issue a duplicate license with no changes.

4. The provider shall notify the Licensing Section on a DCFS approved change of information form prior to making changes to residential operations as noted below. For changes that require the issuance of a new replacement license, the provider shall be required to submit a non-refundable change fee of \$25 in addition to the change of information form. There is no fee charged when the request is noted on the renewal application; however, the change shall not be effective until the first day of the month following the expiration of the current license.

a. Removal of a service or reduction in capacity is effective upon receipt of a completed change of information form.

b. A capacity increase is effective when the following are received and approved by the Licensing Section and the new space shall not be utilized until approval has been granted by the Licensing Section:

- i. completed change of information form;
- ii. \$25 non-refundable change fee; an additional fee may be required in accordance with Paragraph D.2 of this Section based on new capacity;
- iii. current Office of State Fire Marshal approval for new space;
- iv. current Office of Public Health approval for new space;
- v. current city fire approval for new space (if applicable); and
- vi. measurement of the additional space by Licensing Section staff.

c. Name change is effective when the following are received by the Licensing Section:

- i. completed change of information form; and

ii. \$25 non-refundable change fee.
d. Age range change for residents is effective when the following are received and approved by the Licensing Section:

i. completed change of information form; and
ii. \$25 non-refundable change fee.
e. Change to add services provided (acceptance of children of residents) is effective when the following is received and approved by the Licensing Section:

i. completed change of information form;
ii. \$25 non-refundable change fee;
iii. current Office of State Fire Marshal approval form noting acceptance of infants or children of residents;
iv. current Office of Public Health approval noting acceptance of infants or children of residents;
v. inspection by the Licensing Section noting compliance with regulations regarding the children of residents.

f. Change in program director is effective when the following is received and approved by the Licensing Section:

i. completed change of information form;
ii. documentation of program director's qualifications as noted in Subparagraph A.3.a of this Section; and
iii. three signed letters of reference dated within three months prior to hire attesting affirmatively to his/her character, qualifications, and suitability to manage the program.

5. If a provider is found to be non-compliant with regard to a particular service offered or with a particular age group of children/residents, DCFS may require the provider to cease providing the service and/or restrict the age of the children/youth/residents for which the provider is licensed to provide services.

6. All new construction or renovation of a facility requires approval from agencies listed in Paragraph B.2 of this Section and the Licensing Section.

7. A license is not transferable to another person, juridical entity, or location.

E. Renewal of License

1. The license shall be renewed on an annual basis prior to the last day of the anniversary month of the license.

2. The provider shall submit, prior to its license expiration date, a completed renewal application form and applicable fee. The following documentation must also be included:

a. current Office of Fire Marshal approval for occupancy;
b. current Office of Public Health, Sanitarian Services approval;
c. current city fire department approval (if applicable);
d. copy of proof of current general liability and current property insurance for facility;
e. copy of proof of current insurance for vehicle(s) used to transport residents and children;
f. copy of a criminal background clearance or attestation forms as referenced in §7107.A.5 for all owners and program directors as required by R.S. 46:51.2 and 15.587.1; and

g. copy of current state central registry disclosure forms (SCR 1) for all owners and program directors.

3. Prior to renewing the facility license, an on-site survey shall be conducted to assure compliance with all licensing laws and standards. If the facility is found to be in compliance with the licensing laws and standards, and any other required statutes, laws, ordinances, or regulations, the license shall be renewed for a 12-month period.

4. In the event the annual licensing inspection finds the facility is non-compliant with any licensing laws or standards, or any other required statutes, ordinances or regulations but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on such non-compliance or deficiencies cited but no later than 10 days from the date of the inspection or receipt of the deficiencies if mailed or emailed. The corrective action plan shall include a description of how the deficiency shall be corrected, the date by which correction(s) shall be completed, an outline of the steps the provider plans to take in order to prevent further deficiencies from being cited in these areas and the plan to maintain compliance with the licensing standards. Failure to submit an approved corrective action plan timely shall be grounds for revocation or non-renewal.

5. If it is determined that such noncompliance or deficiencies have not been corrected prior to the expiration of the license, the department may issue an extension of the license not to exceed 60 days.

6. When it is determined by the department that such noncompliance or deficiencies have been corrected, a license may be issued for a period not to exceed 12 months.

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

F. Change of Location (CHOL) and Change of Ownership (CHOW)

1. Change of Location (CHOL)

a. When a provider changes the physical location of the residential home, it is considered a new operation and a new license is required prior to opening. The license at the existing location shall not transfer to the new residential home location.

b. After the residential home's new location has been determined, a complete CHOL licensing packet shall be submitted to the Licensing Section. A complete CHOL licensing packet shall include:

i. completed application and non-refundable fee;
ii. current Office of State Fire Marshal approval for occupancy;
iii. current Office of Public Health, Sanitarian Services approval;
iv. current city fire department approval (if applicable);
v. city or parish building permit office approval (if applicable);
vi. local zoning approval (if applicable);

- vii. copy of proof of current general liability and current property insurance for facility;
- viii. copy of current proof of insurance for vehicle(s) used to transport residents or children of residents;
- ix. organizational chart or equivalent list of staff titles and supervisory chain of command;
- x. verification of experience and educational requirements for the program director;
- xi. verification of experience and educational requirements for the service plan manager;
- xii. list of consultant/contract staff to include name, contact info, and responsibilities;
- xiii. copy of program philosophy and goals plan;
- xiv. list of all staff to include staff's name and position;
- xv. list of the names and addresses of owners of privately owned agencies;
- xvi. list of the names and addresses of its' members and officers if a corporation, partnership, or association;
- xvii. documentation of a charter, partnership agreement, constitution, articles of association or bylaws if a corporation, partnership, or association;
- xviii. a floor sketch or drawing of the premises to be licensed;
- xix. any other documentation or information required by the department for licensure;
- xx. documentation of a Louisiana State Police fingerprint based satisfactory criminal record check for all staff including all owners and operators of the facility, as required by R.S. 46:51.2 and 15:587.1;
- xxi. documentation of completed state central registry disclosure form (SCR 1) noting no justified (valid) finding of abuse and/or neglect for all staff including owners and operators (SCR 1 shall be dated no earlier than 30 days before the application has been received by the Licensing Section) or a determination from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children/youth/residents;
- xxii. current approval from the Department of Education, if educational services will be provided on-site; and
- xxiii. current completed reasonable and prudent parent authorized representative form.

c. CHOL inspection will be conducted between the currently licensed and new location to determine compliance with all standards. The inspection at the new location shall be to verify compliance with all licensing standards with the exception of staff and children/residents records that will be transferred. After closure of the old location and prior to the services being provided at the new location, all staff's, resident's, and children's records shall be transferred to the new location.

d. Services shall not be provided simultaneously at both locations.

e. The following shall be submitted to the Licensing Section prior to a license being issued:

- i. current Office of State Fire Marshal approval;
- ii. current city fire approval (if applicable);
- iii. current Office of Public Health approval;
- iv. local zoning approval (if applicable).

f. The license for the new location may be effective upon receipt of all items listed in Paragraph F.1 of this

Section with the approval of DCFS, but not prior to the first day operations begin at the new location.

g. The license for the old location shall be null and void on the last day services were provided at that location, but no later than the effective date of the new location's license. Provider shall submit documentation noting the last day services will be provided at the old location.

2. Change of Ownership (CHOW)

a. Any of the following constitutes a change of ownership for licensing purposes:

- i. change in the federal tax id number;
- ii. change in the state tax id number;
- iii. change in profit status;
- iv. any transfer of the business from an individual or juridical entity to any other individual or juridical entity;
- v. termination of services by one owner and beginning of services by a different owner without a break in services to the children/residents; and/or
- vi. addition of an individual to the existing ownership on file with the Licensing Section.

3. Change of Ownership (CHOW) Procedures

a. When a residential home changes ownership, the current license is not transferable. Prior to the ownership change and in order for a new license to be issued, the new owner shall submit a CHOW application packet containing the following:

- i. completed application form with a non-refundable licensing fee as noted in Paragraph D.2 of this Section payable by money order, certified check, or electronic payment, if available, made payable to DCFS—Licensing Section;
- ii. current Office of State Fire Marshal approval for occupancy;
- iii. current Office of Public Health, Sanitarian Services approval;
- iv. current city fire department approval (if applicable);
- v. city or parish building permit office approval (if applicable);
- vi. local zoning approval (if applicable);
- vii. copy of proof of current general liability and current property insurance for facility;
- viii. copy of current proof of insurance for vehicle(s) used to transport residents or children of residents;
- ix. organizational chart or equivalent list of staff titles and supervisory chain of command;
- x. verification of experience and educational requirements for the program director;
- xi. verification of experience and educational requirements for the service plan manager;
- xii. list of consultant/contract staff to include name, contact info, and responsibilities;
- xiii. copy of program philosophy and goals plan;
- xiv. list of all staff to include staff's name and position;
- xv. list of the names and addresses of owners of privately owned agencies;
- xvi. list of the names and addresses of its members and officers if a corporation, partnership, or association;
- xvii. documentation of a charter, partnership agreement, constitution, articles of association, or bylaws if a corporation, partnership, or association;

xviii. a floor sketch or drawing of the premises to be licensed;

xix. any other documentation or information required by the department for licensure;

xx. documentation of a Louisiana State Police fingerprint-based satisfactory criminal record clearance for all staff including owners and operators. CBC shall be dated no earlier than 30 days before the application has been received by the Licensing Section. The prior owner's documentation of a satisfactory criminal background check for staff and/or owners and operators are not transferrable;

xxi. documentation of completed state central registry disclosure form (SCR 1) noting no justified (valid) finding of abuse and/or neglect for all staff including owners and operators (SCR 1 shall be dated no earlier than 30 days before the application has been received by the Licensing Section) or a determination from the Risk Assessment Panel or Division of Administrative Law noting that the individual does not pose a risk to children/youth/residents. The prior owner's documentation of a state central registry disclosure forms for staff and/or owners and operators are not transferrable;

xxii. current approval from the Department of Education, if educational services will be provided on-site;

xxiii. copy of the current completed reasonable and prudent parent authorized representative form;

xxiv. three signed reference letters dated within three months prior to hire for program director attesting affirmatively to his/her character, qualifications, and suitability to manage the program; and

xxv. three signed reference letters dated within three months prior to hire for service plan manager attesting affirmatively to his/her character, qualifications, and suitability for the position.

b. The prior owner's current Office of State Fire Marshal and Office of Public Health approvals are only transferrable for 60 calendar days. The new owner shall obtain approvals dated after the effective date of the new license from these agencies within 60 calendar days. The new owner will be responsible for forwarding the approval or extension from these agencies to the Licensing Section on or prior to the sixtieth day in order for their license to be extended.

c. A licensing inspection shall be conducted within 60 calendar days to verify compliance with the licensing standards.

d. All staff/children's/resident's information shall be updated under the new ownership as required in LAC 67:V.7111.A.2.d, A.6, A.7, B.2, and B.4.b-c prior to or on the last day services are provided by the existing owner.

e. If all information in Paragraph F.3 of this Section is not received prior to or on the last day services are provided by the existing owner, the new owner shall not operate until a license is issued. The new owner is not authorized to provide services until the licensure process is completed in accordance with Paragraph B.2 of this Section.

f. In the event of a change of ownership, the resident's and children's records shall remain with the new provider.

g. A residential home facing adverse action shall not be eligible for a CHOW. An application involving a residential home facing adverse action shall be treated as an initial application rather than a change of ownership application.

4. Change in Ownership Structure

a. Although the following does not constitute a change of ownership for licensing purposes, a change of information form is required.

i. The change of information form shall be submitted to the Licensing Section within 14 calendar days of the change:

(a). if individual ownership, upon death of the spouse;

(b). if individual ownership, upon death of the spouse and execution of the estate, if the surviving spouse remains as the only owner.

b. The change of information form shall be submitted to the Licensing Section within seven calendar days of the change:

i. if individual ownership, undergoing a separation or divorce until a judicial termination of the community assets and gains, signed by both parties;

ii. change in board members for churches, corporations, limited liability companies, universities, or governmental entities;

iii. any removal of a person from the existing organizational structure under which the residential home is currently licensed.

G. Denial, Revocation, or Non-Renewal of License

1. Even if a facility is otherwise in compliance with these standards, an application for a license may be denied, or a license revoked or not renewed for any of the following reasons:

a. cruelty or indifference to the welfare of the residents or children in the residential home;

b. violation of any provision of the standards, rules, regulations, or orders of the department;

c. disapproval from any agency whose approval is required for licensing;

d. nonpayment of licensing fee or failure to submit a licensing application and required documentation;

e. any validated instance of abuse, neglect, corporal punishment, physical punishment, or cruel, severe or unusual punishment, if the owner is responsible or if the staff member who is responsible remains in the employment of the licensee;

f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

g. any act of fraud such as falsifying or altering documents required for licensure;

h. the owner, director, officer, board of directors member, or any person designated to manage or supervise the provider or any staff providing care, supervision, or treatment to a resident or child of the facility has been convicted of or pled guilty or nolo contendere to any offense listed in R.S. 15:587.1. A copy of a criminal record check performed by the Louisiana State Police (LSP) or other law

enforcement provider, or by the Federal Bureau of Investigation (FBI), or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a rebuttals presumption that such a conviction or plea exists;

i. the provider, after being notified that an officer, director, board of directors member, manager, supervisor, or any employee has been convicted of or pled nolo contendere to any offense referenced above, allows such officer, director, or employee to remain employed, or to fill an office of profit or trust with the provider. A copy of a criminal record check performed by the LSP or other law enforcement provider, or by the FBI, or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a reputable presumption that such a conviction or plea exists;

j. failure of the owner, director, or any employee to report a known or suspected incident of abuse or neglect to child protection authorities;

k. revocation or non-renewal of a previous license issued by a state or federal provider;

l. a history of non-compliance with licensing statutes or standards, including but not limited to failure to take prompt action to correct deficiencies, repeated citations for the same deficiencies, or revocation or denial of any previous license issued by the department;

m. failure to submit an application for renewal or required documentation or to pay required fees prior to the last day of the anniversary month;

n. operating any unlicensed facility and/or program;

o. permit an individual with a justified (valid) finding of child abuse/neglect to be on the premises without being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry prior to a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children/youth/residents; or to knowingly permit an individual who has not disclosed that their name appears with a justified (valid) finding on the state central registry to be on the premises at any time, whether supervised or not supervised;

p. permit an individual, whether supervised or not supervised to be on the residential premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children/youth/residents and the individual has not requested an appeal hearing with DAL within the specified timeframe;

q. have a criminal background, as evidenced by the employment or ownership or continued employment or ownership of or by any individual (paid or unpaid staff) who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, or to any offense involving a juvenile victim;

r. own a residential home and have been convicted of or have pled guilty or nolo contender to any crime in which an act of fraud or intent to defraud is an element of the offense;

s. have knowledge that a convicted sex offender is on the premises and fail to notify law enforcement and licensing management staff immediately upon receipt of such knowledge; or

t. have knowledge that a convicted sex offender is physically present within 1,000 feet of the facility and fail to notify law enforcement immediately upon receipt of such knowledge.

2. If a license is revoked or not renewed or application denied or refused, a license may also be denied or refused to any affiliate of the licensee or applicant.

3. In the event a license is revoked or renewal is denied, (other than for cessation of business or non-operational status), or voluntarily surrendered to avoid adverse action; any owner, officer, member, manager, or program director of such licensee shall be prohibited from owning, managing, directing or operating another licensed facility for a period of not less than two years from the date of the final disposition of the revocation or denial action. The lapse of two years shall not automatically restore a person disqualified under this provision. The department, at its sole discretion, may determine that a longer period of disqualification is warranted under the facts of a particular case.

H. Disqualification of Facility and Provider

1. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not process a subsequent application from the provider for that facility or any new facility for a minimum period of 24 months after the effective date of revocation or non-renewal or a minimum period of 24 months after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

2. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its' license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked. In addition, if the applicant has had a history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to process a subsequent application from that applicant for a minimum period of 24 months after the effective date of denial.

3. The disqualification period provided in this rule shall include any affiliate of the provider.

I. Appeal Process for Denial, Non-Renewal, or Revocation

1. The DCFS Licensing Section, shall advise the applicant, program director or owner by letter of the reasons for non-renewal or revocation of the license, or denial of an application, and the right of appeal. If the director or owner is not present at the facility, delivery of the written reasons for such action may be made to any staff of the facility. Notice to a staff shall constitute notice to the facility of such action and the reasons therefore. A request for appeal shall include a copy of the letter from the Licensing Section that notes the reasons for revocation, denial, or non-renewal,

together with the specific areas of the decision the appellant believes to be erroneous and/or the specific reasons the decision is believed to have been reached in error, and shall be mailed to: Department of Children and Family Services, Appeals Section, P.O. Box 2944, Baton Rouge, LA 70821-9118.

2. A provider shall have 15 calendar days from receipt of the letter notifying of the revocation or non-renewal to request an appeal. Provider may continue to operate during the appeals process as provided in the Administrative Procedure Act.

3. If the provider's license will expire during the appeal process, the provider shall submit an application, fee, copies of the satisfactory criminal background clearances and current SCR 1 forms for all owners. Each provider is solely responsible for obtaining the application form. The application, full licensure fee, copies of the criminal background clearances and SCR 1 forms for all owners shall be received on or postmarked by the last day of the month in which the license expires, or the provider shall cease operation at the close of business by the expiration date noted on the license.

4. A provider shall have 30 calendar days from receipt of the letter notifying of the denial of an application for a license to request an appeal.

5. The Appeals Section shall notify the Division of Administrative Law of receipt of an appeal request. Division of Administrative Law shall conduct a hearing. The appellant will be notified by letter of the decision, either affirming or reversing the original decision.

6. If the decision of DCFS is affirmed or the appeal dismissed, the provider shall terminate operation of the child care business immediately. If the provider continues to operate without a license, the DCFS may file suit in the district court in the parish in which the facility is located for injunctive relief.

7. If the decision of DCFS is reversed, the license will be re-instated and the appellant may continue to operate.

J. Complaint Process

1. In accordance with RS 46:1418, the department shall investigate all complaints (except complaints concerning the prevention or spread of communicable diseases), including complaints alleging abuse or neglect, within prescribed time frames as determined by the department based on the allegation(s) of the complaint. All complaint inspections will be initiated within 30 days.

2. All complaint inspections shall be unannounced.

3. The complaint procedure shall be posted conspicuously in the facility including the name, address, and telephone number of the required department units to be notified.

K. Posting of Notices of Revocation

1. The notice of revocation of the license shall be prominently posted.

a. The Department of Children and Family Services shall prominently post a notice of revocation action at each public entrance of the facility within one business day of such action. This notice must remain visible to the general public, other agencies, parents, guardians, and other interested parties of individuals that receive services from the provider.

b. It shall be a violation of these rules for a provider to permit the obliteration or removal of a notice of revocation that has been posted by the department. The provider shall ensure that the notice continues to be visible to the general public, parents, guardians, and other interested parties throughout the pendency of any appeals of the revocation.

c. The provider shall notify the department's licensing management staff verbally and in writing immediately if the notice is removed or obliterated.

d. Failure to maintain the posted notice of revocation required under these rules shall be grounds for denial, revocation, or non-renewal of any future license.

L. State Central Registry

1. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the owner being on the premises of the child residential home, shall be updated annually at the time of licensure renewal, at any time upon the request of DCFS, and within 24 hours or no longer than the next business day, whichever is shorter, of any owner receiving notice of a justified (valid) finding of child abuse and/or neglect against them. Any current owner or operator of a residential home is prohibited from owning, operating, participating in the governance of or working in a residential home, if they have a justified (valid) finding of child abuse and/or neglect against them. If information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse and/or neglect of a child/youth/resident, the individual shall have a determination by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children/youth/residents in order to continue to operate a residential home.

a. Within 24 hours or no later than the next business day, whichever is shorter, of current owners receiving notice of a justified (valid) finding of child abuse and/or neglect against them, an updated state central registry disclosure form (SCR 1) shall be completed by the owner and submitted to Licensing section management staff as required by R.S. 46:1414.1. The owner must request a risk evaluation assessment in accordance with LAC 67:I.305 within 10 calendar days from completion of the state central registry disclosure form or the license shall be revoked. Immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner, at any and all times when he/she is in the presence of a child/youth/resident, shall be directly supervised by a paid staff (employee) of the residential home. The employee responsible for supervising the owner must have on file a completed state central registry disclosure form indicating that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect. Under no circumstances may the owner with the justified finding be left alone and unsupervised with a child/youth/resident pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law determination that the owner does not pose a risk to any child/youth/resident in care. An owner supervised by an employee who does not have a satisfactory

disclosure form on file as provided in this Subsection shall be deemed to be alone and unsupervised.

i. Any owner with a justified (valid) finding of abuse and/or neglect on the state central registry must submit, together with the SCR 1 required above, a written, signed statement to Licensing Section management staff acknowledging that they are aware of the supervision requirements and understand that under no circumstances are they to be left alone and unsupervised with a child/youth/resident and that they shall be directly supervised by a paid staff (employee) of the residential home, who has completed the required state central registry disclosure form and who has indicated on that form that the employee's name does not appear on the state central registry with a justified (valid) finding of abuse and/or neglect on the state central registry.

ii. If the Risk Evaluation Panel determines that the owner does pose a risk to children/youth/residents and the individual does not appeal the determination within the required timeframe, the owner may close the business or the license shall be revoked.

iii. If the Risk Evaluation Panel determines that the owner poses a risk to children/youth/residents and the individual appeals the determination to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision when in the presence of a child/youth/resident on the premises. Supervision must continue until receipt of a ruling from the Division of Administrative Law that the owner does not pose a risk to children/youth/residents.

iv. If the Division of Administrative Law (DAL) upholds the Risk Evaluation Panel's determination that the individual poses a risk to children/youth/residents, the owner may voluntarily close the business or the license shall be revoked.

2. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form at the time of application to the DCFS Licensing Section. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, the application shall be denied unless the owner requests a risk evaluation assessment on the state central registry risk evaluation request form (SCR 2) within the required timeframe. DCFS will resume the licensure process when the owner provides the written determination by the Risk Evaluation Panel or the Division of Administrative Law that they do not pose a risk to children/youth/residents.

a. If the Risk Evaluation Panel determines that the prospective owner poses a risk to children/youth/residents and the individual does not appeal the determination within the required timeframe, the prospective owner shall withdraw the application immediately or the application shall be denied.

b. If the Risk Evaluation Panel determines that the prospective owner poses a risk to children/youth/residents and the individual appeals the determination to the Division of Administrative Law within the required timeframe, the department shall not proceed with the licensure process until a ruling is made by the Division of Administrative Law that the owner does not pose a risk to children/youth/residents.

c. If the Division of Administrative Law upholds the Risk Evaluation Panel determination that the individual poses a risk to children/youth/residents, the prospective owner shall withdraw the application within ten business days of the mailing of the DAL decision or the application shall be denied.

3. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section management staff as soon as possible, but no later than the close of business on the next business day.

4. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a residential home licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

M. Retention of Records

1. Documentation of the previous 12-months' activity shall be available for review. Records shall be accessible during the hours the facility is open and operating.

2. For licensing purposes, children's and resident's information shall be kept on file a minimum of one year from date of discharge from the program.

3. For licensing purposes, staff records shall be kept on file a minimum of one year from termination of employment from the agency.

4. Records for residents or children in the custody of DCFS shall be kept on file a minimum of five years from the date of discharge from the facility.

5. If the facility closes, the owner of the facility within the state of Louisiana shall store the resident records for five years.

6. All records shall be retained and disposed of in accordance with state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1401 et seq., and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:807 (April 2010), amended LR 36:843 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1463 (July 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:977, 984 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7108. Corrective Action Plans

A. A corrective action plan (CAP) shall be submitted for any and all deficiencies noted by Licensing Section staff regarding any licensing law or standard, or any other required statute, ordinance, or standard. The request for submission of the CAP does not restrict the actions which may be taken by DCFS. If the department does not specify an earlier timeframe for submitting the CAP, the CAP shall be submitted within 10 calendar days from the date of the inspection or receipt of the deficiencies, if mailed or emailed. The CAP shall include a description of how the deficiency will be corrected, the date by which correction(s) shall be completed, and outline the steps the provider plans

to take in order to prevent further deficiencies from being cited in these areas, and the plan to maintain compliance with the licensing standards. If the CAP is not sufficient and/or additional information is required, the provider shall be notified and informed to submit additional information within 3 calendar days. If it is determined that all areas of noncompliance or deficiencies have not been corrected, the department may revoke the license.

B. Provider may challenge a specific deficiency or any information within a cited deficiency which the provider contends is factually inaccurate. The provider shall have one opportunity to request a review of a licensing deficiency. A statement of why the deficiency is being disputed and supporting documents (if applicable) shall be submitted with the corrective action plan within the timeframe specified for the submission of the CAP.

C. The statement of deficiencies for which a review has been requested will not be placed on the internet for viewing by the public until a decision has been reached. As a result of the licensing deficiency review request, a deficiency may be upheld with no changes, the deficiency may be removed, or the deficiency may be upheld and revised to include pertinent information that was inadvertently omitted. Once a decision has been reached, provider will be informed in writing of the decision and the reason for the decision. If the deficiency or information within the deficiency was cited in error or the cited deficiency is revised by the DCFS Licensing Section staff, provider will receive a revised "Statement of Deficiencies" with the decision letter. If any enforcement action was imposed solely because of a deficiency or finding that has been deleted through the licensing deficiency review process, the action will be rescinded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Licensing Section, LR 42:

§7109. Administration and Organization

A. General Requirements

1. Once a residential home provider has been issued a license, the department shall conduct licensing and other inspections at intervals deemed necessary by the department to determine compliance with licensing standards, as well as, other required statutes, laws, ordinances, rules, regulations, and fees. These inspections shall be unannounced.

2. The department shall remove any resident, child, or all residents or children from any facility or agency when it is determined that one or more deficiencies exist within the facility that place the health and well-being of children or residents in imminent danger. The children nor residents shall be returned to the facility until such time as it is determined by the department that the imminent danger has been removed.

3. The provider shall allow representatives of the department in the performance of their mandated duties to inspect all aspects of a program's functioning that impact residents and children and to privately interview any staff member or resident. The department representatives shall be admitted immediately and without delay, and shall be given free access to all relevant files and all areas of a facility, including its grounds. If any portion of a facility is set aside for private use by the facility's owner or staff, department

representatives shall be permitted to verify that no residents or children are present in that portion and that the private areas are inaccessible to residents and children. Any area to which residents or children have or have had access is presumed to be part of the facility and not the private quarters of the owner/operator or staff.

4. The provider shall make any information that DCFS requires under the present standards and any information reasonably related to determination of compliance with these standards available to the department. The resident's rights shall not be considered abridged by this standard.

5. The provider accepting any resident who resides in another state shall show proof of compliance with the terms of the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the compact officers of each state involved.

B. Other Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations, and requirements established by federal, state, local, and municipal regulatory bodies including initial and annual approval by the following:

1. Office of Public Health, Sanitarian Services;
2. Office of State Fire Marshal;
3. city fire department (if applicable);
4. local governing authority or zoning approval (if applicable); and
5. Department of Education (if applicable).

C. Governing Body. The provider shall have an identifiable governing body with responsibility for and authority over the policies, procedures, and activities of the provider.

1. The provider shall have documents identifying all members of the governing body, their addresses, the term of their membership (if applicable), officers of the governing body (if applicable), and the terms of office of all officers (if applicable).

2. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

D. Responsibilities of a Governing Body. The governing body of the provider shall:

1. ensure the provider's compliance and conformity with the provider's charter;
2. ensure the provider's continual compliance and conformity with all relevant federal, state, local, and municipal laws and standards;
3. ensure the provider is adequately funded and fiscally sound by reviewing and approving the provider's annual budget or cost report;
4. ensure the provider is housed, maintained, staffed and equipped appropriately considering the nature of the provider's program;
5. designate a person to act as program director and delegate sufficient authority to this person to manage the facility;

6. formulate and annually review, in consultation with the program director, written policies and procedures concerning the provider's philosophy, goals, current services, personnel practices and fiscal management;

7. have the authority to dismiss the program director;

8. meet with designated representatives of the department whenever required to do so;

9. inform designated representatives of the department prior to initiating any substantial changes in the program, services, or physical plant of the provider.

E. Authority to Operate. Current Louisiana residential home license shall be on display in a prominent area at the facility, except for facilities operated by a church or religious organization [R.S. 46:1406(D)] that choose to keep the license on file and available upon request. All homes shall operate within the licensed capacity, age range, and/or other specific services designated on the license.

F. Accessibility of Program Director. The program director, or a person authorized to act on behalf of the program director, shall be accessible to provider staff or designated representatives of the department at all times (24 hours per day, 7 days per week).

G. Statement of Philosophy and Goals

1. The provider shall have a written statement of its' residential home philosophy, purpose, program, and goals. The statement shall contain a description of all the services provided to include:

a. the extent, limitation, and scope of the services for which a license is sought;

b. the geographical area to be served; and

c. the ages of residents, ages of children, and types of behaviors to be accepted for placement.

H. Policies and Procedures. The provider shall have written policies and procedures approved by the owner or governing body that address, at a minimum, the following:

1. abuse and neglect;

2. admission and discharge;

3. behavior support and intervention program;

4. complaint process;

5. confidentiality and retention of resident records;

6. emergency and safety;

7. grievance process;

8. human resources;

9. incidents;

10. medication management;

11. provider services;

12. quality improvement;

13. resident funds;

14. rights;

15. recordkeeping; and

16. children of residents.

I. House Rules and Regulations. The provider shall have a clearly written list of rules and regulations governing conduct for residents and children in care and shall document that these rules and regulations are made available to each staff member, resident, and, where appropriate, the resident's legal guardian(s).

J. Representation at Hearings. When requested by the placing agency, the provider shall have a representative present at all judicial, educational or administrative hearings that address the status of a resident or child in care of the provider. The provider shall ensure that the resident is given

an opportunity to be present at such hearings, unless prohibited by the resident's legal guardian or by his/her service plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:810 (April 2010), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7111. Provider Requirements

A. Provider Responsibilities

1. Enrichment Activities. Effective August 1, 2016, provider shall assist children at least twice monthly in creating and updating their lifebook. For children that are not developmentally able to participate in the creation and updating of their own lifebook, staff shall create and update for the child.

a. Lifebooks shall be the property of children and shall remain with the child upon discharge.

b. Lifebooks shall be available for review by DCFS.

2. Personnel Requirements

a. The provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to perform the following functions:

i. administrative;

ii. fiscal;

iii. clerical;

iv. housekeeping, maintenance, and food services;

v. direct resident and child services;

vi. record keeping and reporting;

vii. social service; and

viii. ancillary services.

b. The provider shall ensure that all staff members are properly certified or licensed as legally required and appropriately qualified for their position.

c. Personnel can work in more than one capacity as long as they meet all of the qualifications of the position and have met the training requirements.

d. The provider that utilizes volunteers shall be responsible for the actions of the volunteers. Volunteers shall:

i. have orientation and training in the philosophy of the program and the needs of residents and children and methods of meeting those needs prior to working with residents or children;

ii. have documentation of a fingerprint based satisfactory criminal background check from Louisiana State Police as required in R.S. 15:587.1 and R.S. 46:51.2. This check shall be obtained prior to the individual being present in the facility or having access to the residents or children. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, shall be hired by or present in any capacity in the facility. CBC shall be dated no earlier than 30 days of the individual being present in the facility or having access to the residents or children;

iii. have a completed state central registry disclosure form (SCR 1) noting whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46:1414.1. SCR 1 shall be dated no earlier than 30 days of the individual being present in the facility or having access to the residents or children:

(a). this information shall be reported prior to the individual being on the premises of the facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any volunteer receiving notice of a justified (valid) determination of child abuse or neglect;

(b). the prospective non-paid staff (volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility:

(i). if a prospective staff non-paid (volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested;

(ii). individuals are eligible for volunteer services if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children/youth/residents;

(c). current volunteers receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the Licensing Section management staff within 3 business days or upon being on the premises, whichever is sooner. Volunteers will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation on an SCR 2 form in accordance with LAC 67:I.305 or shall be terminated immediately:

(i). if the volunteer will no longer be employed at or provide volunteer services at the facility, the provider shall submit a signed, dated statement indicating that the volunteer will not be on the premises of the facility at any time;

(ii). immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued volunteer services, the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to Licensing Section management staff acknowledging that the volunteer is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the non-paid staff (volunteer) may be counted in ratio. Under no circumstances may the volunteer with the justified finding be left alone and unsupervised with the children/youth/residents pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children/youth/residents;

(iii). if the Risk Evaluation Panel finds the individual does pose a risk to children/youth/residents and the individual chooses not to appeal the finding, the non-paid staff (volunteer) shall be terminated immediately;

(iv). if the Risk Evaluation Panel finds the individual does pose a risk to children/youth/residents and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the non-paid staff (volunteer) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children/youth/residents. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children/youth/residents;

(v). if the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children/youth/residents, the individual shall be terminated immediately;

(d). any owner, operator, current or prospective employee, or volunteer of a facility requesting licensure by DCFS and/or a facility licensed by DCFS is prohibited from working in a facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children/youth/residents;

iv. have three documented reference checks dated within three months prior to beginning volunteer services;

v. have documentation of a signed and dated job description.

3. Personnel Qualifications

a. Program Director. The program director shall meet one of the following qualifications:

i. a bachelor's degree in a human service field plus three years experience relative to the population being served. One year of administrative experience in social services may be substituted for two years of regular experience. A master's degree plus two years of social service experience may be substituted for the three years of experience. An alternative may be a bachelor of social work (BSW) degree or professional equivalent with three years experience working with residents, one year of which may be experience in administration; or

ii. a master's degree in health care administration or in a human service related field; or

iii. in lieu of a degree, six years of administrative experience in health or social services, or a combination of undergraduate education and experience for a total of six years.

b. Service Plan Manager. The service plan manager shall have a bachelor's degree in a human service field plus a minimum of one year with the relevant population.

c. Direct Care Worker. A direct care worker hired on or after August 1, 2016, shall be at least 21 years of age and have a high school diploma or equivalency and at least two years post-high school job experience.

4. Personnel Job Duties

a. The program director shall be responsible for:

i. implementing and complying with policies and procedures adopted by the governing body;

- ii. adhering to all federal and state laws and standards pertaining to the operation of the agency;
 - iii. addressing areas of non-compliance identified by licensing inspections and complaint inspections;
 - iv. directing the program;
 - v. representing the facility in the community;
 - vi. delegating appropriate responsibilities to other staff including the responsibility of being in charge of the facility during their absence;
 - vii. recruiting qualified staff and employing, supervising, evaluating, training, and terminating employment of staff;
 - viii. providing leadership and carrying supervisory authority in relation to all departments of the facility;
 - ix. providing consultation to the governing body in carrying out their responsibilities, interpreting to them the needs of residents and children, making needed policy revision recommendations, and assisting them in periodic evaluation of the facility's services;
 - x. preparing the annual budget for the governing body's consideration, keeping the body informed of financial needs, and operating within the established budget;
 - xi. supervising the facility's management including building, maintenance, and purchasing;
 - xii. participating with the governing body in interpreting the facility's need for financial support;
 - xiii. establishing effective communication between staff and residents and children and providing for their input into program planning and operating procedures;
 - xiv. reporting injuries, deaths, and critical incidents involving residents or children to the appropriate authorities;
 - xv. supervising the performance of all persons involved in any service delivery/direct care to residents or children; and
 - xvi. completing an annual performance evaluation of all staff. For any person who interacts with residents or children, a provider's performance evaluation procedures shall address the quality and quantity of their work.
- b. The service plan manager shall be responsible for:
- i. supervision of the implementation of the resident's service plan;
 - ii. integration of the various aspects of the resident's program;
 - iii. recording of the resident's progress as measured by objective indicators and making appropriate changes/modifications;
 - iv. reviewing quarterly service plan reviews for the successes and failures of the resident's program, including the resident's educational program, with recommendations for any modifications deemed necessary. Designated staff may prepare these reports, however, the service plan manager shall review, sign, and date the reports indicating approval;
 - v. signing and dating all appropriate documents;
 - vi. monitoring that the resident receives a periodic review and review of the need for residential placement and ensuring the timely release, whenever appropriate, of the resident to a least restrictive setting; monitoring any extraordinary restriction of the resident's freedom including use of any form of restraint, any special restriction on a

resident's communication with others, and any behavior management plan;

vii. asserting and safeguarding the human and civil rights of residents, and children, and their families and fostering the human dignity and personal worth of each resident;

viii. serving as liaison between the resident, provider, family, and community during the resident's admission to and residence in the facility, or while the resident is receiving services from the provider in order to:

(a). assist staff in understanding the needs of the resident and his/her family in relation to each other;

(b). assist staff in understanding social factors in the resident's day-to-day behavior, including staff/resident relationships;

(c). assist staff in preparing the resident for changes in his/her living situation;

(d). help the family to develop constructive and personally meaningful ways to support the resident's experience in the facility, through assistance with challenges associated with changes in family structure and functioning, and referral to specific services, as appropriate;

(e). help the family to participate in planning for the resident's return to home or other community placement; and

(f). supervise and implement the shared responsibility plan regarding resident and child.

c. The direct care worker shall be responsible for the daily care and supervision of the residents and children in the living group to which they are assigned which includes:

i. protecting children's and residents' rights;

ii. handling separation anxiety and alleviating the stress of a resident or child in crisis;

iii. modeling appropriate behaviors and methods of addressing stressful situations;

iv. crisis management;

v. behavior intervention and teaching of appropriate alternatives;

vi. training the resident and child in good habits of personal care, hygiene, eating, and social skills;

vii. protecting the resident and child from harm;

viii. handling routine problems arising within the living group;

ix. representing adult authority to the residents and children in the living group and exercising this authority in a mature, firm, compassionate manner;

x. enabling the resident or child to meet his/her daily assignments;

xi. participating in all staff conferences regarding the resident's progress in program evaluation of service plan goals and future planning;

xii. participating in the planning of the facility's program and scheduling such program into the operation of the living group under his/her supervision;

xiii. maintaining prescribed logs of all important events that occur regarding significant information about the performance and development of each resident or child in the group;

xiv. reporting emergency medical or dental care needs to the administrative staff in a timely manner;

xv. reporting critical incidents to administrative staff in a timely manner; and

xvi. completing duties and responsibilities as assigned regarding residents and children.

5. Applicant Screening

a. The provider's screening procedures shall address the prospective employee's qualifications as related to the appropriate job description.

6. Contractors

a. Contractors hired to perform work which does not involve any contact with residents or children, shall not be required to have a criminal background check if accompanied at all times by a staff person if residents or children are present in the facility.

b. Contractors hired to perform work which involves contact with residents or children, shall be required to have documentation of a fingerprint based satisfactory criminal background check from Louisiana State Police as required by R.S. 15:587.1 and R.S. 46:51.2. This check shall be obtained prior to the individual being present in the facility or having access to the residents or children. No person who has been convicted of, or pled guilty or nolo contendere to any offense included in R.S. 15:587.1, shall be hired by or present in any capacity in the facility. Effective August 1, 2016, criminal background checks (CBC) shall be dated no earlier than 30 days of the individual being present in the facility or having access to the residents or children. If an individual has previously obtained a certified copy of their criminal background check obtained from the Louisiana Bureau of Criminal Identification and Information Section of the Louisiana State Police, such certified copy shall be acceptable as meeting the CBC requirements. If a contract staff obtains a certified copy of their criminal background check from the Louisiana State Police, this criminal background check shall be accepted for a period of one year from the date of issuance of the certified copy. This certified copy shall be kept on file at the facility. Prior to the one-year expiration of the certified criminal background check, a new fingerprint-based satisfactory criminal background check shall be obtained from Louisiana State Police. If the clearance is not obtained prior to the one-year expiration of the certified criminal background check, the contract staff is no longer allowed on the premises until a clearance is received.

c. Contractors hired to perform work which involves contact with residents or children, shall be required to have documentation of a state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of the individual receiving notice of a justified (valid) determination of child abuse or neglect. All requirements in §7111.B.2 shall be followed.

7. Orientation

a. All staff hired effective August 1, 2016 or after, shall complete the DCFS "mandated reporter training" available at dcfs.la.gov within five working days of the date of hire and prior to having sole responsibility for residents or children of residents. Documentation of completion shall be the certificate obtained upon completion of the training.

b. The provider's orientation program shall include the following topics for all staff within 15 working days of the date of employment:

i. philosophy, organization, program, practices and goals of the provider;

ii. specific responsibilities of assigned job duties;

iii. administrative procedures;

iv. emergency and safety procedures including medical emergencies;

v. resident rights;

vi. detecting and reporting suspected abuse and neglect;

vii. infection control to include blood borne pathogens;

viii. confidentiality; and

ix. reporting and documenting incidents.

c. The provider's orientation program shall provide a minimum of 24 hours of training in the following topics for all direct care staff within one week of the date of employment and prior to having sole responsibility for residents or children of residents:

i. implementation of service plans to include a behavior plan, when clinically indicated;

ii. staff and resident grievance procedure;

iii. rights and responsibilities of residents who have children residing in the facility;

iv. responsibility of staff with regard to children residing in the facility;

v. transportation regulations, including modeling of how to properly conduct a visual check of the vehicle and demonstration by staff to program director on how to conduct a visual check;

vi. the proper use of child safety restraints required by these regulations and state law (See reference sheet for training resources);

vii. health practices;

viii. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

ix. basic skills required to meet the dental and health needs and problems of the residents and children;

x. prohibited practices;

xi. behavior management techniques;

xii. use of time-out, personal restraints, and seclusion that is to include a practice element in the chosen method performed by a certified trainer;

xiii. safe self-administration and handling of all medications including psychotropic drugs, dosages, and side effects;

xiv. working with people with disabilities, attending to the needs of such residents and children in care, including interaction with family members with disabilities; and

xv. use of specialized services identified in §7117 of this Subpart.

d. The provider shall maintain sufficient information to determine content of training. This information shall be available for review.

e. Documentation of the orientation training shall consist of a statement/checklist in the staff record signed and dated by the staff person and program director, attesting to having received the applicable orientation training and the dates of the orientation training.

f. Effective August 1, 2016, staff in facilities licensed to care for children under age two years or facilities providing services for children of residents shall complete the "Reducing the Risk of SIDS in Early Education and Child Care" training available at www.pedialink.org. This training shall be completed annually. Documentation of completion shall be the certificate obtained upon completion of the training.

g. All new direct care staff shall receive certification in adult cardiopulmonary resuscitation (CPR) and first aid within 45 days of employment. Effective August 1, 2016, if residents or children of residents under the age of 10 are accepted into the program, then staff shall also obtain a certificate in infant/child CPR. No staff member shall be left unsupervised with residents or children until he/she has completed all required training. CPR and first aid shall be updated prior to the expiration of the certification as indicated by the American Red Cross, American Heart Association, or equivalent organization. Online-only training is not acceptable.

8. Annual Training

a. The provider shall ensure that all staff receives training on an annual basis in the following topics:

- i. administrative procedures and programmatic goals;
- ii. emergency and safety procedures including medical emergencies;
- iii. resident rights;
- iv. detecting and reporting suspected abuse and neglect;
- v. infection control to include blood borne pathogens;
- vi. confidentiality;
- vii. reporting and documenting incidents; and
- viii. specific responsibilities of assigned job duties with regard to residents and children.

b. Direct care staff shall receive annual training to include but not be limited to the following topics:

- i. implementation of service plans;
- ii. philosophy, organization, program, practices, and goals of the provider;
- iii. administrative procedures;
- iv. staff and resident grievance procedure;
- v. prohibited practices;
- vi. health practices;
- vii. mental health concerns;
- viii. detecting signs of illness or dysfunction that warrant medical or nursing intervention;
- ix. basic skills required to meet the dental and health needs and problems of the residents and children;
- x. behavior management techniques including acceptable and prohibited practices;
- xi. use of time-out, personal restraints, and seclusion which is to include a practice element in the chosen method performed by a certified trainer;
- xii. safe self-administration and handling of all medication including psychotropic drugs, dosages, and side effects;
- xiii. rights and responsibilities of residents who have children residing in the facility;
- xiv. responsibility of staff with regard to children residing in the facility;

xv. working with people with disabilities, attending to the needs of such residents and children in care, including interaction with family members with disabilities;

xvi. use of specialized services identified in §7117 of this Subpart; and

xvii. educational rights to include IDEA and section 504 accommodations in the Rehabilitation Act of 1973, as amended.

c. All direct care staff shall have documentation of current certification in adult CPR and first aid. Effective August 1, 2016, if residents or children of residents under the age of 10 are accepted into the program, then staff shall also obtain a certificate in infant/child CPR.

d. Documentation of annual training shall consist of a statement/checklist in the staff record signed and dated by the staff person and program director, attesting to having received the applicable annual training and the dates of the training.

e. The provider shall maintain sufficient information available to determine content of training. This information shall be available for review.

f. Effective August 1, 2016, all staff currently employed shall complete the DCFS "mandated reporter training" available at dcfs.la.gov within 45 days and shall be updated annually. Documentation of completion shall be the certificate obtained upon completion of the training.

9. Staffing and Supervision Requirements

a. The provider shall ensure that an adequate number of qualified direct care staff are present with the residents and children as necessary to ensure the health, safety and well-being of residents and children. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the provider, the ages and needs of the residents and children, and shall assure the continual safety, protection, direct care, and supervision of residents and children. In addition to the required number of direct care staff, the provider shall employ a sufficient number of maintenance, housekeeping, administrative, support, and management staff to ensure that direct care staff can provide direct care services.

i. The provider shall have at least one adult staff present for every six residents when residents are present and awake. In addition, there shall be one additional staff person for every six children present. There shall always be a minimum of two staff present when children are in the facility.

ii. The provider shall have at least 1 adult staff present and awake for every 12 residents when residents are present and participating in rest time. During these hours, the ratio of 1 staff to every 12 residents is acceptable only if the residents are in their assigned bedrooms. In addition, there shall be one additional staff person for every 6 children present. There shall always be a minimum of 2 staff present when children are in the facility.

iii. In addition to required staff, at least one staff person shall be on call in case of emergency.

iv. Independent contractors (therapists, tutors, etc.) shall not be included in ratio while providing said individualized services to a specific resident(s) or child(ren).

v. Management or other administrative staff may be included in ratio only if they are exclusively engaged in providing supervision of the residents or children.

vi. Staff are allowed to sleep, during nighttime hours, only if the following are met.

(a). There is a functional and monitored security system. Alarms shall be placed on all windows and exterior doors. The security system shall be enabled during nighttime hours and anytime that the staff/house parents are sleeping. Residents shall not be given the security system code.

(b). There shall be a functional monitoring system on all interior resident and children bedroom doors.

vii. When residents or children are away from the facility, staff shall be available and accessible to the residents and children to handle emergencies or perform other necessary direct care functions.

viii. The provider utilizing live-in staff shall have sufficient relief staff to ensure adequate off-duty time for live-in staff.

ix. Six or more residents under two years of age shall have an additional direct care worker on duty when the residents are present to provide a staff ratio of one staff per every six residents under age two, in addition to staff noted in §7111.A.9.a.i.

x. The provider shall not contract with outside sources for any direct care staff, including one-on-one trainers or attendants.

xi. Staff shall be assigned to supervise residents and children whose names and whereabouts that staff person shall know.

xii. When the resident is at the facility with her child, she is responsible for the care and supervision of her own child when not engaged in services or other activities. Staff shall be present and available as a resource and to lend support and guidance to the resident.

xiii. During nighttime hours, staff shall actively participate in the individual care of a resident and/or assisting a resident in the care of her child.

(a). In bedrooms where a child resides with their parent, an auditory device shall be required to enable staff to provide assistance to the resident in the care of her child. The monitor shall have an on/off feature which is controlled by the resident.

xiv. Children shall be directly supervised by staff on the playground, in vehicles, and while away from the facility; unless the child is accompanied by their own parent.

xv. Staff shall actively supervise residents and/or children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

10. Reasonable and Prudent Parent Standard

a. The provider shall designate in writing at least one on-site staff person as the authorized representative to apply the reasonable and prudent parent standard to decisions involving the participation of a child of a resident who is in foster care or a resident who is in foster care and placed in the facility in age or developmentally appropriate activities. The staff person(s) designated as the authorized representative shall be at the licensed location at all times during the facility's hours of operation. The Licensing Section shall be notified in writing within five calendar days if there is a change to one of the designated representatives.

b. The authorized representative shall utilize the reasonable and prudent parent standard when making any decision involving the participation of a child of a resident who is in foster care or a resident who is in foster care and

placed in the facility in age or developmentally appropriate activities.

c. The authorized representative shall receive training or training materials shall be provided on the use of the reasonable and prudent parent standard. Documentation of the reasonable and prudent parent training shall be maintained. The reasonable and prudent parent training or training materials, as developed or approved by DCFS, shall include, but is not limited to the following topic areas:

i. age- or developmentally-appropriate activities or items;

ii. reasonable and prudent parent standard;

iii. role of the provider and of DCFS; and

iv. allowing for normalcy for the resident or child while respecting the parent's residual rights.

B. Record Keeping

1. Administrative File

a. The provider shall have an administrative file that shall contain, at a minimum, the following:

i. a written program plan describing the services and programs offered by the provider;

ii. organizational chart of the provider;

iii. all leases, contracts, and purchase-of-service agreements to which the provider is a party;

iv. insurance policies. Every provider shall maintain in force at all times current comprehensive general liability insurance policy, property insurance, and insurance for all vehicles used to transport residents or children. This policy shall be in addition to any professional liability policies maintained by the provider and shall extend coverage to any staff member who provides transportation for any resident or child in the course and scope of his/her employment;

v. all written agreements with appropriately qualified professionals, or a state agency, for required professional services or resources not available from employees of the provider.

vi. written documentation of all residents' exits and entrances from facility property not covered under summary of attendance and leave. Documentation must include, at a minimum, date, time and destination.

2. Staff File

a. The provider shall have a personnel file for each staff that shall contain, at a minimum, the following:

i. the application for employment, including education, training, and experience;

ii. a criminal background check in accordance with state law:

(a). prior to employment, a Louisiana State Police fingerprint based criminal background check shall be conducted in the manner required by R.S. 15:587.1 and 46:51.2. Effective August 1, 2016, criminal background checks (CBC) shall be dated no earlier than 30 days of the individual being present in the facility or having access to the residents or children;

(b). the provider shall have a written policy and procedure for obtaining a criminal background check on persons as required in R.S. 15:587.1 and 46:51.2;

(c). no person, having any supervisory or other interaction with residents or children, shall be hired or on the premises of the facility until such person has submitted his or her fingerprints to the Louisiana Bureau of Criminal

Identification and Information and it has been determined that such person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C). This shall include any employee or non-employee who performs paid or unpaid work with the provider to include independent contractors, consultants, students, volunteers, trainees, or any other associated person, as defined in these rules;

(d). any employee who is convicted of or has pled nolo contendere to any crime listed in R.S. 15:587.1(C) shall not continue employment after such conviction or nolo contendere plea.

iii. evidence of applicable professional or paraprofessional credentials/certifications according to state law;

iv. signed and dated, written job description;

v. documentation of three signed and dated reference checks or telephone notes dated within three months prior to hire attesting affirmatively to the individual's character, qualifications, and suitability for the position assigned. References shall be obtained from individuals not related to the staff person;

vi. staff's hire and termination dates;

vii. documentation of current driver's license for operating provider or private vehicles in transporting residents or children of residents;

viii. annual performance evaluations signed and dated by the staff person and program director to include his/her interaction with residents and children, family, and other providers;

ix. personnel action, other appropriate materials, reports, and notes relating to the staff's employment with the facility;

x. state central registry disclosure forms (SCR 1) noting whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator.

(a). Prior to employment, each prospective employee shall complete a state central registry disclosure form (SCR 1) as required in R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff receiving notice of a justified (valid) determination of child abuse or neglect.

(i). The prospective paid staff (employee) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

(ii). If a prospective staff (employee) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(iii). Individuals are not eligible for employment unless and until they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law expressly stating that they do not pose a risk to children/youth/residents.

(b). Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the Licensing Section management staff within three business days or upon being on the premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation on an SCR 2 form in accordance with LAC 67:1.305 or shall be terminated immediately.

(i). If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

(ii). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to Licensing Section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee) may be counted in ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children/youth/residents.

(iii). If the Risk Evaluation Panel finds the individual does pose a risk to children/youth/residents and the individual chooses not to appeal the finding, the staff (employee) shall be terminated immediately.

(iv). If the Risk Evaluation Panel finds the individual does pose a risk to children/youth/residents and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children/youth/residents. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children/youth/residents.

(v). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children/youth/residents, the individual shall be terminated immediately.

(c). Any owner, operator, current or prospective employee, or volunteer of a facility requesting licensure by DCFS and/or a facility licensed by DCFS is prohibited from working in a facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk

Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children/youth/residents.

b. Staff shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

3. Accounting File

a. The provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books, and records.

b. The provider shall ensure that all entries in records are legible, signed by the person making the entry, and accompanied by the date on which the entry was made.

c. All records shall be maintained in an accessible, standardized order and format, and shall be retained and disposed of according to state and federal law.

d. The provider shall have sufficient space, facilities, and supplies for providing effective accounting record keeping services.

4. Resident Record

a. Active Record. The provider shall maintain a separate active record for each resident and child. The records shall be maintained in an accessible, standardized order and format. The records shall be current and complete and shall be maintained in the facility in which the resident and child resides and readily available to facility staff. The provider shall have sufficient space, facilities, and supplies for providing effective storage of records. The records shall be available for inspection by the department.

b. Each resident's record shall contain at least the following information:

i. resident's name, date of birth, Social Security number, previous home address, sex, religion, and birthplace of the resident;

ii. dates of admission and discharge;

iii. other identification data including documentation of court status, legal status or legal custody and who is authorized to give consents;

iv. for residents placed from other states, proof of compliance with the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health, when indicated. Proof of compliance shall include clearance letters from the compact officers of each state involved;

v. name, address, and telephone number of the legal guardian(s), and parent(s), if appropriate;

vi. name, address, and telephone number of a physician and dentist to be called in an emergency;

vii. resident's authorization for routine and emergency medical care;

viii. the pre-admission screening and admission assessment. If the resident was admitted as an emergency admission, a copy of the emergency admission note shall be included as well;

ix. resident's history including family data, educational background, employment record, prior medical history, and prior placement history;

x. a copy of the physical assessment report;

xi. reports of assessments and of any special problems or precautions;

xii. individual service plan, updates, and quarterly reviews;

xiii. continuing record of any illness, injury, or medical or dental care when it impacts the resident's ability to function or impacts the services he or she needs;

xiv. reports of any incidents of abuse, neglect, or incidents, including use of time-out, personal restraints, or seclusion;

xv. photo of resident updated at least annually;

xvi. a summary of court visits;

xvii. a summary of all visitors and contacts including dates, name, relationship, telephone number, address, the nature of such visits/contacts, and feedback from the family;

xviii. a record of all personal property and funds, which the resident has entrusted to the facility;

xix. reports of any resident grievances and the conclusion or disposition of these reports;

xx. written acknowledgment that the resident has received clear verbal explanation and copies of his/her rights, the house rules, written procedures for safekeeping of his/her valuable personal possessions, written statement explaining his/her rights regarding personal funds, and the right to examine his/her record;

xxi. all signed informed consents;

xxii. a discharge summary; and

xxiii. immunization record within 30 calendar days of admission.

c. Each child's record shall contain at least the following information:

i. child's information form signed and dated by the legal guardian and updated as changes occur, listing:

(a). the child's name, date of birth, sex, date of admission;

(b). name of parent(s) and legal guardian;

(c). name and telephone number of child's physician;

(d). name and telephone number of the child's dentist (if applicable);

(e). any special concerns, including but not limited to allergies, chronic illness, and any special needs of the child (if applicable);

(f). any special dietary needs, restrictions, or food allergies/intolerances (if applicable);

(g). name and telephone number of child's caseworker (if applicable); and

(h). written authorization to care for child from legal guardian.

ii. For residents that retain custody of their children, a written authorization signed and dated by the resident to secure emergency medical treatment in the event the child is left in the care of staff.

iii. For residents that retain custody of their children, a written authorization signed and dated by the resident noting the first and last names of individuals to whom the child may be released, including child care facilities, transportation services, or any person or persons who remove the child from the facility.

(a). The provider shall verify the identity of the authorized person prior to releasing the child.

d. For residents that retain custody of their children, the provider shall obtain written, informed consent from the resident prior to releasing any information, recordings, or photographs from which the child might be identified,

except for authorized state and federal agencies. This one-time written consent shall be obtained from the resident and updated as changes occur.

e. Provider shall have a signed and dated shared responsibility plan between the resident and provider detailing how they will share the rights and responsibilities of meeting the child's daily needs to include, but not limited to, who will care for the child at certain times and days of the week, who is responsible for supervising, feeding, changing, bathing, tending to the developmental needs of the child, and purchasing items for the child.

f. If the resident does not retain custody of her child, the provider shall have a written individual child care agreement for each child with the person or agency holding custody of the child.

g. If the resident retains custody of her child, the provider shall obtain written authorization signed and dated by the resident to transport her child on a regular basis shall include (if staff transports without resident):

- i. name of child;
- ii. type of service (to and from home, and to and from school to include the name of the school); and
- iii. names of individuals or school to whom the child may be released.

C. Confidentiality of Records

1. The provider shall have written policies and procedures for the maintenance, security and retention of records. The provider shall specify who shall supervise the maintenance of records, who shall have custody of records, to whom records may be released, and disposition or destruction of closed service record materials. Records shall be the property of the provider, and the provider, as custodian, shall secure records against loss, tampering, or unauthorized use or access.

2. The provider shall maintain the confidentiality of all records to include all court related documents, as well as, educational and medical records. Every employee of the provider has the obligation to maintain the privacy of the resident, child, and his/her family and shall not disclose or knowingly permit the disclosure of any information concerning the resident, child or his/her family, directly or indirectly, to other residents or children in the facility or any other unauthorized person.

3. When the resident is of majority age and not interdicted, a provider shall obtain the resident's written, informed permission prior to releasing any information from which the resident or his/her family might be identified, except for authorized state and federal agencies.

4. When the resident is a minor or is interdicted, the provider shall obtain written, informed consent from the legal guardian(s) prior to releasing any information from which the resident might be identified, except for accreditation teams and authorized state and federal agencies.

5. When the resident retains custody of her child the provider shall obtain written, informed consent from the resident prior to releasing any information from which the resident might be identified, except for accreditation teams and authorized state and federal agencies.

6. When the resident does not retain custody of her child, the provider shall obtain written, informed consent from the legal guardian(s) prior to releasing any information from which the child might be identified, except for accreditation teams and authorized state and federal agencies.

7. The provider shall, upon written authorization from the resident or his/her legal guardian(s), make available information in the record to the resident, his/her counsel or the resident's legal guardian(s). If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be injurious to the health or welfare of the resident, the provider may deny access to the record. In any such case, the provider shall prepare written reasons for denial to the person requesting the record and shall maintain detailed written reasons supporting the denial in the resident's file.

8. The provider may use material from the residents' or children's records for teaching and research purposes, development of the governing body's understanding, and knowledge of the provider's services, or similar educational purposes, provided names are deleted, other identifying information are disguised or deleted, and written authorization is obtained from the resident or his/her legal guardian(s).

9. Staff Communication

a. The provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the residents and children. This system of communication shall include recording and sharing of daily information noting unusual circumstances, individual and group problems of residents and children, and other information requiring continued action by staff. Documentation shall be legible, signed, and dated by staff.

b. Effective August 1, 2016, a daily log/record for all children, to include first and last name and in/out times shall be maintained. This record shall accurately reflect all children on the premises at any given time.

D. Incidents

1. Critical Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating, and analyzing all critical incidents.

a. The provider shall report any of the following critical incidents to the Louisiana Child Protection Statewide Centralized Intake Hotline 1-855-4LA-KIDS (1-855-452-5437), resident's or child's assigned caseworker, and the Licensing Section:

- i. abuse;
- ii. neglect;
- iii. injuries of unknown origin;
- iv. death;
- v. attempted suicide;
- vi. serious threat or injury to the health, safety, or well-being of the resident or child, i.e., elopement or unexplained absence of a resident or child;
- vii. injury with substantial bodily harm while in seclusion or during use of personal restraint; or
- viii. unplanned hospitalizations, emergency room visits, and emergency urgent care visits.

- b. The program director or designee shall:
 - i. immediately verbally notify the legal guardian of the incident;
 - ii. immediately verbally notify the appropriate law enforcement authority in accordance with state law;
 - iii. submit the mandated critical incident report form within 24 hours of the incident to Louisiana Child Protection Statewide Centralized Intake and Licensing;
 - iv. if requested, submit a final written report of the incident to the legal guardian as soon as possible, but no later than five working days of the incident;
 - v. conduct an analysis of the incident and take appropriate corrective steps to prevent future incidents from occurring;
 - vi. maintain copies of any written reports or notifications in the resident's or child's record;
 - vii. ensure that a staff person accompanies residents and children when emergency services are needed.

2. Other Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating, and analyzing all other accidents, incidents, and other situations or circumstances affecting the health, safety, or well-being of a resident or child.

a. The provider shall initiate a detailed report of any other unplanned event or series of unplanned events, accidents, incidents, and other situations or circumstances affecting the health, safety, or well-being of a resident or child excluding those identified in Subparagraph D.1.a of this Section within 24 hours of the incident.

3. When a child residing in the facility with their parent, sustains any of the following, the resident shall be immediately notified:

- a. blood not contained in an adhesive strip;
- b. injury of the neck and head;
- c. eye injury;
- d. human bite which breaks the skin;
- e. any animal bite;
- f. an impaled object;
- g. broken or dislodged teeth;
- h. allergic reaction skin changes (e.g. rash, spots, swelling, etc.);
- i. unusual breathing;
- j. symptoms of dehydration;
- k. any temperature reading over 101 oral, 102 rectal, or 100 axillary; or
- l. any injury or illness requiring professional medical attention.

4. The provider shall not delay seeking care while attempting to make contact with the resident or legal guardian in a situation which requires emergency medical attention.

5. At a minimum, the incident report for critical and other incidents shall contain the following:

- a. date and time the incident occurred;
- b. a brief description of the incident;
- c. where the incident occurred;
- d. names of residents, children, or staff involved in the incident;
- e. immediate treatment provided, if any;
- f. symptoms of pain and injury discussed with the physician;

- g. signature of the staff completing the report;
- h. name and address of witnesses;
- i. date and time the legal guardian was notified;
- j. any follow-up required;
- k. preventive actions to be taken in the future; and
- l. documentation of actions regarding staff involved to include corrective action.

6. A copy of all written reports shall be maintained in the resident's or child's record.

E. Abuse and Neglect

1. The provider shall establish and follow a written, abuse/neglect policy that includes the following information:

a. describes communication strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, mandated reporting requirements to the child protection agency and applicable laws;

b. ensures the resident and child are protected from potential harassment during the investigation;

c. ensures that the provider shall not delay reporting suspected abuse and/or neglect to the Child Protection Statewide Hotline in an attempt to conduct an internal investigation to verify the abuse/neglect allegations;

d. ensures that the provider shall not require any staff, including unpaid staff, to report suspected abuse/neglect to the provider or management prior to reporting to the Child Protection Statewide Hotline 1-855-4LA-KIDS (1-855-452-5437);

e. ensures the staff member involved in the incident does not work directly with the resident or child involved in the program until an internal investigation is conducted by the facility or the child protection unit makes an initial report;

f. ensures the staff member that may have been involved in the incident is not involved in conducting the investigation;

g. ensures that confidentiality of the incident is protected.

2. As mandated reporters, all staff and owners shall report any suspected abuse and/or neglect of a resident or child whether that abuse or neglect was perpetrated by a staff member, a family member, or any other person in accordance with R.S 14:403 to the Louisiana Child Protection Statewide Hotline, 1-855-4LA-KIDS (1-855-452-5437). This information shall be posted in an area regularly used by residents.

3. After reporting suspected abuse and/or neglect as required by Louisiana law, provider shall notify licensing. At a minimum the report shall contain:

a. name of suspected resident or child victim of alleged child abuse and/or neglect;

b. address and telephone number of where suspected victim may be contacted;

c. name(s) of alleged perpetrator(s);

d. alleged perpetrator(s)' address;

e. nature, extent, and cause of resident's or child's injury, neglect or condition;

f. current circumstance of resident or child and if resident is currently in danger;

g. identify names of possible witnesses;

h. identify how incident came to reporter's attention;

- i. have other incidents of suspected abuse and/or neglect been reported regarding this resident, child, or alleged perpetrator;
- j. any other pertinent information; and
- k. name of person reporting to child protection and time of notification.

F. Grievance Process

1. The provider shall have a written policy and procedure, which establishes the right of every resident and the resident's legal guardian(s) to file grievances without fear of retaliation.

2. The written grievance procedure shall include, but not be limited to:

- a. a formal process for the resident and the resident's legal guardian(s) to file grievances that shall include procedures for filing verbal, written, or anonymous grievances; and

- b. a formal process for the provider to communicate with the resident and/or legal guardian about the grievance within five calendar days of receipt of the grievance;

3. The provider shall document that the resident and the resident's legal guardian(s) are aware of and understand the grievance and complaint policy and procedure and have been provided a written copy.

4. The provider shall maintain a log documenting all verbal, written, or anonymous grievances filed.

5. Documentation of any resident's or resident's legal guardian(s)' grievance and the conclusion or disposition of these grievances shall be maintained in the resident's record. This documentation shall include any action taken by the provider in response to the grievance and any follow up action involving the resident.

G. Data Collection and Quality Improvement

1. The provider shall have a written policy and procedure for maintaining a quality improvement program to include:

- a. systematic data collection and analysis of identified areas that require improvement;

- b. objective measures of performance;

- c. at least monthly review of resident's and children's records;

- d. quarterly review of incidents and the use of personal restraints and seclusion to include documentation of the date, time, and identification of residents and staff involved in each incident to include a critical analysis of the incidents to note patterns of behavior by specific residents or specific staff; and

- e. implementation of plans of action to improve in identified areas.

2. Documentation related to the quality improvement program shall be maintained for at least two years.

H. Family Involvement. The provider shall have written strategies to foster ongoing positive communication and contact between children, residents, and their families, their friends, and others significant in their lives.

I. Influenza Notice to Parents

1. In accordance with R.S. 46:1428 providers shall make available to each resident's parent or legal guardian and to each youth aged eighteen or above information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and

possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a resident or youth may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Children and Family Services and shall be made available to parents or legal guardians prior to November 1 of each year. This information shall also be provided to residents with children residing in the facility.

J. Recalled Products

1. The provider shall post the current copy of "The Safety Box" newsletter issued by the Office of the Attorney General as required by chapter 55 of title 46 of R.S. 46:2701-2711. Items listed as recalled in the newsletter shall not be used and shall be immediately removed from the premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:979, 984 (April 2012), LR 42:221 (February 2016), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7113. Admission and Discharge

A. Admission

1. Policies and Procedures

a. The provider shall have written policies and procedures that shall include, at a minimum, the following information regarding an admission to the facility:

- i. the application process and the possible reasons for rejection of an application;

- ii. pre-admission screening assessment;

- iii. the age and sex of residents and children to be served;

- iv. the needs, problems, situations, or patterns best addressed by the provider's program;

- v. criteria for admission;

- vi. authorization for care of the resident and child;

- vii. authorization to obtain medical care for the resident and child;

- viii. criteria for discharge;

- ix. procedures for insuring that placement within the program are the least restrictive alternative, appropriate to meet the resident's needs.

b. No resident shall be admitted from another state unless the provider has first complied with all applicable provisions of the Interstate Compact on Juveniles, the Interstate Compact on Placement of Children, and the Interstate Compact on Mental Health. Proof of compliance shall be obtained prior to admission and shall be kept in the resident's file.

c. When refusing admission to a resident or child, the provider shall notify the referring party of the reason for refusal of admission in writing. If his/her parent(s) or legal guardian(s) referred the resident, he/she shall be provided written reasons for the refusal. Copies of the written reasons for refusal of admission shall be kept in the provider's administrative file.

2. Pre-Admission Screening

a. The provider shall receive an assessment of the applicant from the placing agency prior to admission that identifies services that are necessary to meet the resident's needs and verifies that the resident cannot be maintained in a less restrictive environment within the community. This assessment shall be maintained in the resident's record. The provider shall conduct the pre-admission screening within 24 hours of admission to assess the applicant's needs and appropriateness for admission and shall include the following:

- i. current health status and any emergency medical needs, mental health, and/or substance abuse issues;
- ii. allergies;
- iii. chronic illnesses or physical disabilities;
- iv. current medications and possible side effects;
- v. any medical illnesses or condition that would prohibit or limit the resident's activity or behavior plan;
- vi. proof of legal custody or individual placing agency agreement;
- vii. other therapies or ongoing treatments;
- viii. family information; and
- ix. education information.

b. Information gathered from the preadmission screening shall be confirmed with resident and legal guardian (if applicable).

3. Admission Assessment

a. An admission assessment shall be completed within three business days of admission to determine the service needs and preferences of the resident. This admission assessment shall be maintained in the resident's record. Information gathered from the pre-admission screening and the admission assessment shall be used to develop the interim service plan for the resident.

B. Service Plan

1. Within 15 days of admission, the provider, with input from the resident, his/her parents, if appropriate and legal guardian shall develop an interim service plan using information gathered from the pre-admission screening and the admission assessment. This interim service plan shall include:

- a. the services required to meet the resident's needs;
- b. the scope, frequency, and duration of services;
- c. monitoring that will be provided; and
- d. who is responsible for providing the services, including contract or arranged services.

2. Within 30 days of admission, the provider shall have documentation that a resident has an individual service plan developed that is comprehensive, time-limited, goal-oriented, and addresses the needs of the resident. The service plan shall include the following components:

- a. a statement of goals to be achieved for the resident and his/her family;
- b. plan for fostering positive family relationships for the resident, when appropriate;
- c. schedule of the daily activities including training/education for residents and recreation to be pursued by the program staff and the resident in attempting to achieve the stated goals;
- d. any specific behavior management plan:
 - i. the provider shall obtain or develop, with the participation of the resident and his/her legal guardian or

family, an individualized behavior management plan for each resident receiving service. Information gathered from the pre-admission screening and the admission assessment will be used to develop the plan. The plan shall include, at a minimum, the following:

- (a). identification of the resident's triggers;
- (b). the resident's preferred coping mechanisms;
- (c). techniques for self-management;
- (d). anger and anxiety management options for calming;
- (e). a review of previously successful intervention strategies;
- (f). a summary of unsuccessful behavior management strategies;
- (g). identification of the resident's specific targeted behaviors;
- (h). behavior intervention strategies to be used;
- (i). the restrictive interventions to be used, if any;
- (j). physical interventions to be used, if any; and
- (k). specific goals and objectives that address target behaviors requiring physical intervention;

e. any specialized services provided directly or arranged for will be stated in specific behavioral terms that permit the problems to be assessed and methods for insuring their proper integration with the resident's ongoing program activities;

f. any specific independent living skills needed by the resident which will be provided or obtained by the facility staff;

g. overall goals and specific objectives that are time limited;

h. methods for evaluating the resident's progress;

i. use of community resources or programs providing service or training to that resident, and shall involve representatives of such services and programs in the service planning process whenever feasible and appropriate. Any community resource or program involved in a service plan shall be appropriately licensed or shall be a part of an approved school program;

j. any restriction to residents' "rights" deemed necessary to the resident's individual service plan. Any such restriction shall be expressly stated in the service plan, shall specifically identify the right infringed upon, and the extent and duration of the infringement, and shall specify the reasons such restriction is necessary to the service plan, and the reasons less restrictive methods cannot be employed;

k. goals and preliminary plans for discharge;

l. identification of each person responsible for implementing or coordinating implementation of the plan;

m. mental health screening; and

n. developmental and psychological assessments.

3. The service plan shall be developed by a team including, but not limited to, the following:

- a. service plan manager;
- b. representatives of the direct care staff working with the resident on a daily basis;
- c. the resident;
- d. the resident's parent(s), if indicated;
- e. the resident's legal guardian(s); and
- f. any other person(s) significantly involved in the resident's care on an ongoing basis.

4. All team participants shall sign the completed service plan.

5. The service plan shall be monitored by the team on an ongoing basis to determine its continued appropriateness and to identify when a resident's condition or preferences have changed. A team meeting shall be held at least quarterly. The quarterly review shall be signed and dated by all team participants.

6. The provider shall ensure that all persons working directly with the resident are appropriately informed of the service plan and have access to information from the resident's records that is necessary for effective performance of the employee's assigned tasks.

7. The provider shall document that the resident, parent(s), where applicable, and the legal guardian have been invited to participate in the planning process. When they do not participate, the provider shall document the reasons for nonparticipation.

8. All service plans including quarterly reviews shall be maintained in the resident's record.

C. Discharge

1. The provider shall have a written policy and procedure for all discharges. The discharge procedure shall include at least the following:

- a. projected date of discharge;
- b. responsibilities of each party (provider, resident, family) with regard to the discharge and transition process;
- c. transfer of any pertinent information regarding the resident's stay at the facility; and
- d. follow-up services, if any and the responsible party.

2. Emergency discharges initiated by the provider shall take place only when the health and safety of a resident or other residents might be endangered by the resident's further stay at the facility. The provider shall have a written report detailing the circumstances leading to each unplanned discharge within seven calendar days of the discharge. The discharge summary is to be kept in the resident's record and shall include:

- a. the name and home address of the resident, the resident's parent(s), where appropriate, and the legal guardian(s);
- b. the name, address, and telephone number of the provider;
- c. the reason for discharge and, if due to resident's unsuitability for provider's program, actions taken to maintain placement;
- d. a summary of services provided during care including medical, dental, and health services;
- e. a summary of the resident's progress and accomplishments during care; and
- f. the assessed needs that remain to be met and alternate service possibilities that might meet those needs.

3. When a discharge is planned, the provider shall compile or obtain a complete written discharge summary within 30 days of discharge. The discharge summary is to be kept in the resident's record and shall include:

- a. the name and home address of the resident, the resident's parent(s), where appropriate, and the legal guardian(s);
- b. the name, address, and telephone number of the provider;

c. the reason for discharge and, if due to resident's unsuitability for provider's program, actions taken to maintain placement;

d. a summary of services provided during care including medical, dental, and health services;

e. a summary of the resident's progress and accomplishments during care; and

f. the assessed needs that remain to be met and alternate service possibilities that might meet those needs.

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§7115. Resident Protection

A. Rights

1. Provider Responsibility

a. The provider shall have written policies and procedures that ensure each resident's and child's rights are guaranteed and protected.

b. None of the resident's rights shall be infringed upon or restricted in any way unless such restriction is necessary to the resident's individual service plan. When individual rights restrictions are implemented, the provider shall clearly explain and document any restrictions or limitations on those rights, the reasons that make those restrictions medically necessary in the resident's individual service plan and the extent and duration of those restrictions. The documentation shall be signed by provider staff, the resident, and the legal guardian(s) or parent(s), if indicated. No service plan shall restrict the access of a resident to legal counsel or restrict the access of state or local regulatory officials to a resident.

c. Residents and children of residents with disabilities have the rights guaranteed to them under the Americans with Disabilities Act (ADA), 42 USC §12101 et seq., and regulations promulgated pursuant to the ADA, 28 CFR parts 35 and 36 and 49 CFR part 37; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC §794, and regulations promulgated pursuant thereto, including 45 CFR part 84. These include the right to receive services in the most integrated setting appropriate to the needs of the individual; to obtain reasonable modifications of practices, policies, and procedures where necessary (unless such modifications constitute a fundamental alteration of the provider's program or pose undue administrative burdens); to receive auxiliary aids and services to enable equally effective communication; to equivalent transportation services; and to physical access to a provider's facilities.

2. Privacy

a. Residents and children have the right to personal privacy and confidentiality. Any records and other information about the resident or child shall be kept confidential and released only with the legal guardian's expressed written consent or as required by law.

b. A child shall not be photographed or recorded without the express written consent of the resident or the child's legal guardian(s). A resident shall not be photographed or recorded without the express written

consent of the resident and the resident's legal guardian(s). All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the child and resident.

c. Residents nor children shall participate in research projects without the express written consent of the resident, child, and the legal guardian(s).

d. Residents nor children shall participate in activities related to fundraising and publicity without the express written consent of the resident, child, and the legal guardian(s).

3. Contact with Family and Collaterals

a. A child and resident have the right to consult freely and have visits with his/her family (including but not limited to his or her mother, father, grandparents, brothers, and sisters), legal guardian(s) and friends subject only to reasonable rules. Special restrictions shall be imposed only to prevent serious harm to the child or resident. The reasons for any special restrictions shall be recorded in the child's record or resident's service plan, as applicable and explained to the child, resident, and his or her family. The service plan manager shall review the special restrictions every 30 days and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's record or resident's service plan, as applicable. Home visits shall not be restricted without approval from the legal guardian.

b. A child and resident have the right to telephone communication. The provider shall allow children and residents to receive and place telephone calls in privacy subject only to reasonable rules and to any specific restrictions in the child's record or resident's service plan, as applicable. The service plan manager shall formally approve any restriction on telephone communication in a child's record or resident's service plan, as applicable. The service plan manager shall review the special restrictions every 30 days and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's record or resident's service plan, as applicable. The cost for long distance calls shall not exceed the usual and customary charges of the local phone company provider. There shall be no restrictions on communication between a child and their legal counsel.

c. A child and resident have the right to send and receive mail. The provider shall allow children and residents to receive mail unopened, uncensored, and unread by staff unless contraindicated in the child's record or resident's service plan, as applicable. The service plan manager shall review this restriction every 30 days. No service plan or record shall restrict the right to write letters in privacy and to send mail unopened, uncensored, and unread by any other person. Correspondence from a child's or resident's legal counsel shall be opened, read, or otherwise interfered with for any reason. Children and residents shall have access to all materials necessary for writing and sending letters and, when necessary, shall receive assistance.

d. Children and residents have the right to consult freely and privately with legal counsel, as well as, the right to employ legal counsel of their choosing.

e. Children and residents have the right to communicate freely and privately with state and local regulatory officials.

4. Safeguards

a. Residents and children have the right to file grievances without fear of reprisal as provided in the grievances section of these standards.

b. Residents and children have the right to be free from mental, emotional, and physical abuse and neglect and be free from chemical or mechanical restraints. Any use of personal restraints shall be reported to the legal guardians(s).

c. Residents and children have the right to live within the least restrictive environment possible in order to retain their individuality and personal freedom.

5. Civil Rights

a. Residents' nor children's civil rights shall be abridged or abrogated solely as a result of placement in the provider's program.

b. A resident nor child shall be denied admission, segregated into programs, or otherwise subjected to discrimination on the basis of race, color, religion, national origin, sexual orientation, physical limitations, political beliefs, or any other non-merit factor. Facilities must comply with the requirements of the Americans with Disabilities Act, 42 USC §12101 et seq. (ADA).

6. Participation in Program Development

a. A resident has the right to refuse treatment.

b. Residents and children have the right to be treated with dignity in the delivery of services.

c. Residents and children have the right to receive preventive, routine, and emergency health care according to individual needs which will promote his or her growth and development.

d. Residents and children have the right to be involved, as appropriate to age, development, and ability in assessment and service planning.

e. Residents and children have the right to consult with clergy and participate in religious services in accordance with his/her faith, but shall not be forced to attend religious services. The provider shall have a written policy of its religious orientation, particular religious practices that are observed, and any religious restrictions on admission. This description shall be provided to the resident, child, and the legal guardian(s). When appropriate, the provider shall determine the wishes of the legal guardian(s) with regard to religious observance and make every effort to ensure that these wishes are carried out. The provider shall, whenever possible, arrange transportation and encourage participation by those residents or children who desire to participate in religious activities in the community.

7. Acknowledgement of Rights

a. Each resident shall be fully informed of all rights noted in Paragraphs A.1-6 of this Section and of all rules and regulations governing residents' conduct and responsibilities, as evidenced by written acknowledgment, at the time of admission of the receipt of a copy of resident's rights, and when changes occur. Each resident's record shall contain a copy of the written acknowledgment, which shall be signed and dated by the program director, or designee, and the resident and/or his or her legal guardian.

B. Prohibited Practices

1. The provider shall have a written list of prohibited practices by staff members. Staff members shall not be

allowed to engage in any of the prohibited practices. Staff shall not promote or condone these prohibited practices between residents or children. This list shall include the following:

- a. use of a chemical or mechanical restraint;
- b. corporal punishment such as slapping, spanking, paddling or belting;
- c. marching, standing, or kneeling rigidly in one spot;
- d. any kind of physical discomfort except as required for medical, dental or first aid procedures necessary to preserve the resident's or child's life or health;
- e. denial or deprivation of sleep or nutrition except under a physician's order;
- f. denial of access to bathroom facilities;
- g. verbal abuse, ridicule, or humiliation, shaming or sarcasm;
- h. withholding of a meal, except under a physician's order;
- i. requiring a resident or child to remain silent for a long period of time;
- j. denial of shelter, warmth, clothing, or bedding;
- k. assignment of harsh physical work;
- l. punishing a group of residents or children for actions committed by one or a selected few; a group activity shall not be cancelled for the entire group, prior to the activity, due to the behavior of one or more individuals;
- m. withholding family visits or communication with family;
- n. extensive withholding of emotional response;
- o. denial of school services or denial of therapeutic services;
- p. other impingements on the basic rights of children or residents for care, protection, safety, and security;
- q. organized social ostracism, such as codes of silence;
- r. pain compliance, slight discomfort, trigger points, pressure points, or any pain inducing techniques;
- s. hyperextension of any body part beyond normal limits;
- t. joint or skin torsion;
- u. pressure or weight on head, neck, throat, chest, lungs, sternum, diaphragm, back, or abdomen, causing chest compression;
- v. straddling or sitting on any part of the body;
- w. any position or maneuver that obstructs or restricts circulation of blood or obstructs an airway;
- x. any type of choking;
- y. any type of head hold where the head is used as a lever to control movement of other body parts;
- z. any maneuver that involves punching, hitting, poking, pinching, or shoving;
- aa. separation of a resident and her child as a means of punishment shall be prohibited;
- bb. punishment for actions over which the child has no control such as bedwetting, enuresis, encopresis, or incidents that occur in the course of toilet training activities;

cc. use of threats or threatening an individual with a prohibited action even though there is/was no intent to follow through with the threat;

dd. cruel, severe, unusual, degrading, or unnecessary punishment;

ee. yelling, yanking, shaking;

ff. requiring a child or resident to exercise or placing a child or resident into uncomfortable positions;

gg. exposing a child or resident to extreme temperatures or other measures producing physical pain;

hh. putting anything in a resident's or child's mouth;

or

ii. using abusive or profane language, including but not limited to telling a child to "shut up"; or

jj. any technique that involves mouth, nose, eyes or any part of the face or covering the face or body.

2. The resident and child, where appropriate, and the resident's legal guardian(s) shall receive a list of the prohibited practices. There shall be documentation signed and dated acknowledging receipt of the list of prohibited practices by the resident and, where appropriate, the child and resident's legal guardian(s) in the record.

3. A list of prohibited practices shall be posted in the facility in an area regularly utilized by residents.

C. Behavior Support and Intervention Program

1. The provider shall have a behavior support and intervention program that:

a. describes the provider's behavior support philosophy;

b. safeguards the rights of residents, children, families, and staff;

c. governs allowed and prohibited practices; and

d. designates oversight responsibilities.

2. The provider shall have written policies and procedures that include, but are not limited to:

a. a behavior support and intervention model consistent with the provider's mission;

b. proactive and preventive practices;

c. development of behavior support plans for residents and children;

d. prohibited behavior intervention practices;

e. restrictive practices, if any, that are allowed and circumstances when they can be used;

f. physical interventions to be used, if any;

g. informed consent of legal guardians for use of behavior support and interventions; and

h. oversight process.

3. An informed consent shall be obtained from the legal guardian for the use of any restrictive intervention.

4. There shall be a system in place that monitors the effectiveness of behavior support and interventions implemented.

5. All persons implementing physical interventions shall be trained and certified in behavior management under nationally accredited standards.

6. Participation by the resident, family, and the resident's legal guardian(s) in the development and review of the behavior support plan shall be documented in the resident's record.

7. There shall be documentation of written consent to the behavior support plan by the resident and the resident's legal guardian(s) in the resident's record.

D. Time-Out

1. The provider shall have a written policy and procedure that governs the use of time-out to include the following:

a. any room used for time-out shall be unlocked and the resident or child shall, at all times, be free to leave if he or she chooses;

b. time-out procedures shall be used only when less restrictive measures have been used without effect. There shall be written documentation of less restrictive measures used in the resident's or child's record;

c. emergency use of time-out for residents shall be approved by the service plan manager or program director for a period not to exceed one hour;

d. time-out used in an individual behavior support plan for residents shall be part of the overall service plan;

e. the plan shall state the reasons for using time-out and the terms and conditions under which time-out will be terminated or extended, specifying a maximum duration of the use of the procedure that shall under no circumstances exceed two hours for residents;

f. staff shall make periodic checks but at least every 15 minutes while the resident is in time-out;

g. the resident shall be allowed to return to the daily milieu at any time he/she has regained control of his/her behavior and is ready to participate in the group activities;

h. a resident or child in time-out shall not be denied access to bathroom facilities, water, or meals;

i. after each use of time-out, the staff shall document the incident and place in the resident's record;

j. an administrative review of the incident by the program director or other facility management staff shall be conducted within three calendar days to include an analysis of specific precipitating factors and strategies to prevent future occurrences;

k. time-out shall not be used for children under two years of age;

l. the length of time-out for children 2 years-5 years of age shall be based on the age of the child and shall not exceed a maximum of one minute per year of age. Provider shall take into account the child's developmental stage, tolerances, and ability to learn from time-out.

E. Personal Restraints

1. The provider shall have a written policy and procedure that governs the use of personal restraints.

2. Use of personal restraints shall never be used as a form of punishment, a form of discipline, in lieu of adequate staffing, as a replacement of active treatment or for staff convenience.

3. Written documentation of any less restrictive measures attempted shall be documented in the resident's record.

4. A personal restraint shall be used only in an emergency when a resident's behavior escalates to a level where there is imminent risk of harm to the resident or others and other de-escalation techniques have been attempted without effect. The emergency use of personal restraints shall not exceed the following:

a. 30 minutes for a resident under nine years old; or

b. one hour for a resident nine years old or older.

5. The specific maximum duration of the use of personal restraints as noted in Paragraph E.4 of this Section may be exceeded only if prior to the end of the time period, a written continuation order noting clinical justification is obtained from a licensed psychiatrist, psychologist, or physician. The maximum time for use of personal restraints shall be 12 hours.

6. During any personal restraint, staff qualified in emergency behavior intervention must monitor the resident's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being. If available, staff that is not restraining the resident should monitor the resident. The resident must be released immediately when an emergency health situation occurs during the restraint. Staff must obtain treatment immediately.

7. The resident must be released as soon as the resident's behavior is no longer a danger to himself or others.

8. Restraints are only to be used by employees trained by a certified trainer under a program that aligns with the nationally accredited standards. A single person restraint can only be initiated in a life-threatening crisis. Restraint by a peer is prohibited. Staff performing a personal restraint on a resident with specific medical conditions must be trained on risks posed by such conditions.

9. As soon as possible after the use of a personal restraint, the provider shall provide and document debriefing. Separate debriefing meetings must be held with senior staff and the staff members(s) involved, the resident involved, witnesses to the event, and family members, if indicated.

10. After use of a personal restraint, the staff shall document the incident and place in the resident's record.

11. An administrative review of the incident by the program director or other facility management staff shall be conducted within three calendar days to include an analysis of specific precipitating factors and strategies to prevent future occurrences.

12. All incidents of personal restraint use shall be trended in the quality improvement program. A summary report on the use of personal restraints will be prepared and submitted to the Licensing Section on a quarterly basis.

13. In the event a death occurs during the use of a personal restraint, the facility shall conduct a review of its personal restraint policies and practices and retrain all staff in the proper techniques and in methods of de-escalation and avoidance of personal restraint use within five calendar days. Documentation to include staff signatures and date of training shall be submitted to the Licensing Section.

F. Seclusion

1. The provider shall have a written policy and procedure that governs the use of seclusion, if such a room exists in the facility. Seclusion may only be used in accordance with this Subsection.

2. Use of seclusion shall never be used as a form of punishment, a form of discipline, in lieu of adequate staffing, as a replacement of active treatment or for staff convenience.

3. A resident will be placed in a seclusion room only in an emergency, when there is imminent risk of harm to the resident or others and when less restrictive measures have

been used without effect. Written documentation of the less restrictive measures attempted shall be documented in the resident's record. The emergency use of seclusion shall not exceed the following:

- a. 1 hour for a resident under nine years old; or
- b. 2 hours for a resident nine years old or older.

4. The specific maximum duration of the use of seclusion as noted in Paragraph F.3 of this Section may be exceeded only if prior to the end of the time period, a written continuation order noting clinical justification is obtained from a licensed psychiatrist, psychologist, or physician. The maximum time for use of seclusion shall be 12 hours.

5. A staff member shall exercise direct physical observation of the resident at all times while in seclusion. During the seclusion, the staff must monitor the resident's physical well-being for physical distress and take appropriate action, when indicated. The resident must be released immediately when an emergency health situation occurs during the seclusion and staff must obtain treatment immediately. The staff member must assess the resident's psychological well-being to ensure that the intervention is being completed in a safe and appropriate manner and that the facility's policies and procedures are being upheld.

6. Seclusion used as part of an individual behavior support plan shall state the reasons for using seclusion and the terms and conditions under which seclusion shall be terminated or extended.

7. A resident in seclusion shall not be denied access to bathroom facilities, water or meals.

8. As soon as possible, but no later than 72 hours after the use of seclusion, the provider shall provide and document debriefing. Separate debriefing meetings must be held with senior staff and the staff member (s) involved, the resident involved, witnesses to the event, and family members, if indicated.

9. After use of seclusion, the staff shall document the incident and place in the resident's record.

10. An administrative review of the incident by the program director or other facility management staff shall be conducted within three calendar days to include an analysis of specific precipitating factors and strategies to prevent future occurrences.

11. All incidents of seclusion shall be trended in the quality improvement program. A summary report on the use of seclusion will be prepared and submitted to the Licensing Section on a quarterly basis.

12. The resident's legal guardian, the Louisiana Child Protection Statewide Hotline, 1-855-4LA-KIDS (1-855-452-5437), and the Licensing Section shall be notified if injury or death occurs while the resident is in seclusion.

13. In the event a death occurs during the use of seclusion, the facility shall conduct a review of its seclusion policies and practices and retrain all staff in the proper use of seclusion and in methods of de-escalation and avoidance of seclusion within five calendar days. Documentation to include staff signatures and date of training shall be submitted to the Licensing Section.

14. Seclusion Room

a. The resident shall be unable to voluntarily leave the room.

b. The room shall be large enough to allow easy access for staff to enter and exit and deep enough to ensure

that the person being secluded cannot keep the door from closing by blocking it with the body or an object.

c. The ceiling of the seclusion room shall be unreachable and of solid construction.

d. If there are windows in the seclusion room, they should be locked with security locks and not allowed to open to the outside. Safety glass or plastic that cannot be broken shall be used for the panes. The view from the door observation window must not be obstructed.

e. The inside walls of the seclusion room shall be smooth and capable of withstanding high impact. Nothing can protrude or extend from the wall.

f. The door of the room shall be a security rated door, shall be able to withstand high impact and stress and shall swing outward to prevent a person from blocking the door from opening and thus barricading himself in the room.

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§7117. Provider Services

A. Education

1. The provider shall have written policies and procedures to ensure that each resident and child has access to the most appropriate educational services consistent with the resident's and child's abilities and needs, taking into account his/her age and level of functioning.

2. The provider shall ensure that educational records from the resident's or child's previous school are transferred to the new educational placement timely.

3. A resident's service plan shall identify if the resident has any disabilities. Residents and children with disabilities shall be identified to the local education agency. If the resident or child is eligible for Individual with Disabilities Education Act (IDEA) services, the provider shall work with the legal guardian to ensure that he or she has a current educational evaluation, an appropriate individualized educational plan (IEP), and surrogate parent to assist him or her in enforcing rights under the IDEA. If the resident or child is eligible for section 504 accommodations in the Rehabilitation Act of 1973, as amended, the provider shall work with the legal guardian.

4. If a resident or child is suspected of having a disability that would qualify him or her for special education services, the provider shall work with the legal guardian to ensure that a request for a special education evaluation is made and that the local education agency responds appropriately.

5. The provider shall work with the legal guardian and, where applicable, surrogate parent, to identify any deficiencies or problems with a resident's or child's IEP or individualized accommodations plan (IAP), and to ensure that the resident's or child's IEP or IAP is being implemented by the local education agency.

6. Whether educational services are provided on or off-site, all residents and children of school age shall be enrolled in and attending the least restrictive available option of either a school program approved by the Department of Education or an alternative educational program approved

by the local school board within three school days of admission to the facility. Children of residents residing in the facility shall attend school off site.

7. The provider shall ensure residents have access to vocational training, GED programs, and other alternative educational programming, if appropriate.

8. Whether educational services are provided on or off-site, the provider shall coordinate residents' and children's participation in school-related extracurricular activities, including any related fees or costs for necessary equipment.

9. Whether educational services are provided on or off-site, the provider shall notify the resident's or child's legal guardian(s) and, where applicable, the resident's surrogate parent, verbally and in writing within 24 hours of any truancy, expulsion, suspension, or informal removal from school. Notification shall be documented in the resident's or child's record.

10. All residents and children shall receive a free and appropriate education. If transportation is not provided by the local educational authority for the resident, the provider shall transport the resident to school or other educational program in order for the resident to fulfill the requirements of their educational program.

11. When children are picked up or dropped off at the facility by a public or private school bus or transportation service, staff shall be present to safely escort children to and from the bus.

12. If educational services are provided on-site, the following also apply.

a. The provider shall provide accommodations for educational services to be provided by the local school district in accordance with local school board calendar. The school classes shall be held in classrooms/multi-purpose rooms. The provider shall ensure that the educational space is adequate to meet the instructional requirements of each resident.

b. Prior to the end of the first official school day following admission, the resident shall receive a brief educational history screening with respect to their school status, special education status, grade level, grades, and history of suspensions or expulsions. Staff shall use this information to determine initial placement in the facility educational program.

c. Within three school days of the resident's arrival at the facility, the provider shall request educational records from the resident's previous school. If records are not received within 10 school days of the request, the program director shall report in writing on the eleventh day to the local school district from which records were requested that the information has been requested and not received. If the records are not received within the following seven school days of notifying the local school district, the program director shall file a written complaint with the Board of Elementary and Secondary Education (BESE) on the eighth day.

d. Residents in restricted, disciplinary, or high security units shall receive an education program comparable to youth in other units in the facility consistent with safety needs.

e. When residents are suspended from the facility school, the suspension shall comply with local jurisdiction due process requirements.

f. Behavior intervention plans shall be developed for a resident whose behavior or emotional stability interferes with their school attendance and progress.

g. The provider shall have available reading materials geared to the reading levels, interests, and primary languages of residents.

h. The provider shall ensure that residents are engaged in instruction for the minimum minutes in a school day required by law.

i. The program director shall immediately report in writing to the local school district if the facility school is not being staffed adequately to meet state student to teacher ratios for education, including not but not limited to, special education staff and substitute teaching staff. If the issue is not resolved within five school days by the local school district, then the program director shall file a written complaint on the sixth day with BESE and cooperate with any subsequent directives received from BESE.

B. Milieu (Daily Living) Services

1. Routines

a. The provider shall have a written schedule of daily routines for residents designed to provide for reasonable consistency and timeliness in daily activities, in the delivery of essential services to residents and in the provision of adequate periods of recreation, privacy, rest and sleep.

b. Written schedules of daily routines shall be posted and available to the residents.

c. Daily routines shall be determined in relation to the needs and convenience of the residents who live together.

d. Whenever appropriate, the residents shall participate in making decisions about schedules and routines.

e. The program for daily routines shall be reviewed periodically and revised as the needs of the residents or living group change.

f. The Provider shall develop written policies regarding a daily schedule for children that includes planned/unplanned activities, allowing for flexibility and change. Activities shall accommodate and have due regard for individual needs and differences among children. Children's routines shall include time daily for indoor and outdoor play (weather permitting) that incorporate free play, gross/fine motor activities and vigorous and quiet activities. Time should also be designated for activities that support children's development of social, emotional, physical, language/literacy, cognitive/intellectual and cultural skills, as well as for routine occurrences such as meals/snacks, rest time, etc.

2. Personal Possessions

a. The provider shall allow residents and children to bring their personal possessions and display them, when appropriate.

b. Residents and children shall be allowed to acquire possessions of their own. The provider may, as necessary, limit or supervise the use of these items. Where

restrictions are imposed, the resident or child shall be informed by staff of the reason of the restriction. The decision and reason shall be recorded in the individual's record.

c. Each resident and child shall have a secure place to store his/her personal property.

d. Possessions confiscated by staff will be documented to include:

- i. signature of the staff and resident or child;
- ii. date and time of confiscation; and
- iii. date and time when returned to resident or child and signature of resident or child.

e. The provider shall be responsible for all confiscated items, including replacement if the item is damaged, lost, or stolen while in the provider's possession.

f. A log of any valuable personal possessions to include any assistive devices, i.e., hearing aide, glasses, etc., shall be maintained by the provider.

3. Clothing and Personal Appearance

a. The provider shall ensure that residents and children are provided with clean, well-fitting clothing appropriate to the season and to the individual's age, sex, and individual needs. Whenever possible, the resident or child should be involved in selecting their clothing.

b. The provider shall have a written policy concerning any limitations regarding personal appearance. Any limitations should be related to maintaining the safety and well-being of the residents or children receiving services.

c. Clothing and shoes shall be of proper size and adequate in amount to permit laundering, cleaning, and repair.

d. Clothing shall be maintained in good repair.

e. Clothing shall belong to the individual resident or child and not be required to be shared.

f. All clothing provided to a resident or child shall remain with the resident or child upon discharge.

g. The provider shall ensure residents and children have access to adequate grooming services, including haircuts.

4. Independent Life Training

a. The provider shall have a program to ensure that residents receive training in independent living skills appropriate to their age and functioning level. Individualized independent life training goals shall be included in each resident's service plan.

b. This program shall include but not be limited to instruction in:

- i. health and dental care, hygiene and grooming;
- ii. family life;
- iii. sex education including family planning and venereal disease counseling;
- iv. laundry and maintenance of clothing;
- v. appropriate social skills;
- vi. housekeeping;
- vii. use of transportation;
- viii. budgeting and shopping;
- ix. money management;
- x. cooking and proper nutrition;
- xi. employment issues, including punctuality and attendance;

xii. use of recreation and leisure time;

xiii. education, college, trade, and/or long-term planning/life goals;

xiv. accessing community services; and

xv. parenting skills.

c. In addition, residents with children shall also receive training in the following topics:

- i. parenting preparation classes;
- ii. stages of growth in infants, children and adolescents;
- iii. day-to-day care of infants, children and adolescents;
- iv. disciplinary techniques for infants, children, and adolescents;
- v. child-care resources;
- vi. stress management;
- vii. life skills; and
- viii. decision making.

5. Money:

a. the provider shall permit and encourage a resident or child, as age appropriate, to possess his/her own money. The provider can give the resident or child an allowance. Older residents should be given the opportunity to earn additional money by providing opportunities for paid work, unless otherwise indicated by the resident's service plan, and reviewed every 30 days by the service plan manager;

b. money earned or received either as a gift or an allowance by a resident or child, shall be deemed to be that individual's personal property;

c. limitations may be placed on the amount of money a resident or child may possess or have unencumbered access to when such limitations are considered to be in the individual's best interests and are duly recorded in the resident's service plan or child's record. The reasons for any limitations should be fully explained to the resident, child, and their families;

d. resident's monetary restitution for damages shall only occur when there is clear evidence of individual responsibility for the damages and the service team approves the restitution. The resident and his/her legal guardian(s) shall be notified in writing within 24 hours of any claim for restitution and shall be provided with specific details of the damages, how, when and where the damages occurred, and the amount of damages claimed. If the amount is unknown, an estimate of the damages shall be provided and an exact figure provided within 30 days. The resident and his/her legal guardian(s) shall be given a reasonable opportunity to respond to any claim for damages. If the provider receives reimbursement for damages either through insurance or other sources, the resident shall not be responsible for restitution;

e. the provider shall maintain a separate accounting of each resident's or child's money; and

f. upon discharge, the provider shall provide the resident, child, or legal guardian(s) any outstanding balance.

6. Work

a. The provider shall have a written policy regarding the involvement of residents in work including:

- i. description of any unpaid tasks required of residents;

- ii. description of any paid work assignments including the pay for such assignments that are at least minimum wage;
- iii. description of the provider's approach to supervising work assignments; and
- iv. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws.

b. The provider shall demonstrate that any resident's work assignments are designed to provide a constructive experience and are not used as a means of performing vital provider functions at low cost. All work assignments shall be in accordance with the resident's service plan.

c. The provider shall assign, as unpaid work, age appropriate housekeeping tasks similar to those performed in a normal family home. Any other work assigned shall be compensated. The provider shall ensure that all such employment practices comply fully with state and federal laws and standards. No resident shall be employed in any industrial or hazardous occupation, or under any hazardous conditions.

d. When a resident engages in off-grounds work, the provider shall be responsible for ensuring the resident has access to transportation and other supports needed to perform the work successfully. The provider shall document that:

- i. such work is voluntary and in accordance with the resident's service plan;
- ii. the service plan manager approves such work;
- iii. the conditions and compensation of such work are in compliance with the Fair Labor Standards Act and other applicable state and federal laws; and
- iv. such work does not conflict with the resident's program.

C. Food Service

1. The provider shall ensure that a staff person has oversight of the total food service of the facility. This person shall be familiar with nutrition and food service management and shall be responsible for implementation and/or delegation of:

- a. purchasing food according to the approved dietary menu;
- b. oversight of storing and handling of food;
- c. oversight of food preparation;
- d. oversight of food serving;
- e. maintaining sanitary standards in compliance with state and local regulations;
- f. orientation, training, and supervision of food service personnel to include proper feeding techniques as age appropriate;
- g. maintaining a current list of residents and children with special nutritional needs;
- h. having an effective method of recording and transmitting diet orders and changes;
- i. recording information in the resident's or child's record relating to special nutritional needs; and
- j. providing information on residents' and children's diets to staff.

2. The provider shall have written policies and procedures that ensure that residents and children are, on a daily basis, provided with food of such quality and in such

quantity as to meet the recommended daily dietary allowances adjusted for age, gender, and activity of the United States Department of Agriculture and doesn't deny any rights of the resident or child. Two of the three meals (breakfast, lunch, supper) served to children shall be hot meals. Residents and children shall also be provided with a snack between meals and prior to bedtime. Breakfast shall be served one hour from when residents awake.

3. The provider shall maintain a master menu, including appropriate substitutions, which is written and approved annually, by a registered dietician.

a. The provider shall post the written menu at least one week in advance.

b. Menus shall provide for a sufficient variety of foods, vary from week-to-week and reflect all substitutions. Any substitution shall be of equal nutritional value. Residents shall be allowed to provide input into these menus.

c. Written menus and records of foods purchased shall be maintained on record for one year.

4. The provider shall ensure that any modified diet for a resident or child shall be:

- a. prescribed by the individual's physician, approved by the registered dietician, and identified in the resident's service plan or child's record; and
- b. planned, prepared, and served by persons who have received instruction on the modified diet.

5. Condiments appropriate for the ordered diet will be available.

6. When meals are provided to staff, the provider shall ensure that staff members eat the same food served to residents or children, unless special dietary requirements dictate differences in diet.

7. Food provided to a resident or child shall be in accordance with his/her religious beliefs.

8. No resident or child shall be denied food or force-fed for any reason except as medically required pursuant to a physician's written order. A copy of the order shall be maintained in the individual's record.

9. The provider shall have written policies and procedures to ensure that all food shall be stored, prepared and served under sanitary conditions. The provider shall ensure that:

- a. food served to the resident or child is in appropriate quantity; at appropriate temperatures; in a form consistent with the developmental level of the individual; and with appropriate utensils;
- b. food served to a resident or child not consumed is discarded;
- c. food and drink purchased shall be of safe quality. Milk and milk products shall be grade A and pasteurized.

10. Hand washing facilities, including hot and cold water, soap, and paper towels, shall be provided adjacent to food service work areas.

11. Food shall be stored separate from cleaning supplies and equipment.

12. Food storage areas are free of rodents, roaches, and/or other pests and the provider shall take precautions to ensure such pests do not contaminate food.

13. Persons responsible for food preparation shall not prepare food if they have symptoms of acute illness or an open wound.

14. Information regarding food allergies/special diets shall be posted in the food prep area with special care so that the individual names are not in public view.

15. Children under four years of age shall not have foods that are implicated in choking incidents. Examples of these foods include but are not limited to the following: whole hot dogs, hot dogs sliced in rounds, raw carrot rounds, whole grapes, hard candy, nuts, seeds, raw peas, hard pretzels, chips, peanuts, popcorn, marshmallows, spoonfuls of peanut butter, and chunks of meat larger than what can be swallowed whole.

16. Formula for an infant prepared by or in a residential home shall be prepared in accordance with the instructions of the formula or by the techniques recommended by the physician which shall be on file at the facility.

17. Formula for an infant shall be labeled with the child's name and date of preparation.

18. Formula for an infant shall be refrigerated immediately after preparation and shall not be used more than 24 hours after preparation. The timeframe for use after preparation may be longer than 24 hours if directed by a physician or as documented in the instructions of the formula. The timeframe shall not be extended beyond the physician's recommendation or the instructions of the formula.

19. Formula shall not be heated in a microwave oven.

20. Water shall be given to infants only with written instructions from child's physician.

21. A child's bottle shall not be propped at any time.

22. Infants shall be held while being bottle-fed to provide a nurturing, safe feeding experience.

D. Health-Related Services

1. Health Care

a. The provider shall have written policies and procedures for providing preventive, routine, and emergency medical and dental care for residents and children and shall show evidence of access to the resources. They shall include, but are not limited to, the following:

i. ongoing appraisal of the general health of each resident and child;

ii. provision of health education, as appropriate;

iii. provision for keeping immunizations current;

iv. approaches that ensure that any medical service administered will be explained to the resident or child in language suitable to his/her age and understanding;

v. an ongoing relationship with a licensed physician, dentist, and pharmacist to advise the provider concerning medical and dental care;

vi. availability of a physician on a 24-hour, seven days a week basis;

vii. reporting of communicable diseases and infections in accordance with law;

viii. procedures for ensuring residents and children know how and to whom to voice complaints about any health issues or concerns.

2. Medical Care

a. The provider shall arrange a medical examination by a physician for the resident or child within a week of admission unless the resident or child has received such an examination within 30 days before admission and the results of this examination are available to the provider. If the

resident or child is being transferred from another residential home and has had a physical examination within the last 12 months, a copy of this examination can be obtained to meet the requirement of the admission physical. The physical examination shall include:

i. an examination of the resident or child for any physical injury, physical disability, and disease;

ii. vision, hearing, and speech screening; and

iii. a current assessment of the resident's or child's general health.

b. The provider shall arrange an annual physical examination of all residents and children.

c. Whenever indicated, the resident or child shall be referred to an appropriate medical specialist for either further assessment or service, including gynecological services for female residents or children. The provider shall schedule such specialist care within 30 days of the initial exam. If the specialist's service needed is a result of a medical emergency, such care shall be obtained immediately.

d. The provider shall ensure that a resident or child receives timely, competent medical care when he/she is ill or injured. The provider shall notify the legal guardian, verbally and/or in writing, within 24 hours of a resident's or child's illness or injury that requires service from a physician or hospital. The notification shall include the nature of the injury or illness and any service required.

e. Records of all medical examinations, services, and copies of all notices to legal guardian(s) shall be kept in the resident's or child's record.

3. Dental Care

a. The provider shall have written policies and procedures for providing comprehensive dental services to include:

i. provision for dental service;

ii. provision for emergency service on a 24-hour, seven days a week basis by a licensed dentist;

iii. a recall system specified by the dentist, but at least annually;

iv. dental cleanings annually; and

v. training and prompting for residents and children to brush their teeth at least twice per day.

b. The provider shall arrange a dental exam for each resident and child within 90 days of admission unless the resident or child has received such an examination within six months prior to admission and a copy of the examination is obtained by the provider. Children shall begin receiving annual examinations at the eruption of their first tooth and no later than 12 months of age.

c. Records of all dental examinations, follow-ups and service shall be documented in the record.

d. The provider shall notify the legal guardian(s), verbally and/or in writing, within 24 hours when a resident or child requires or receives dental services of an emergency nature. The notification shall include the nature of the dental condition and any service required. Notification shall be documented in the record.

4. Immunizations

a. The provider shall have written policies and procedures regarding immunizations to ensure that:

i. within 30 days of admission, the provider shall obtain documentation of a resident's or child's immunization

history, ensuring that the resident and child have received and will receive all appropriate immunizations and booster shots that are required by the Office of Public Health;

ii. the provider shall maintain a complete record of all immunizations received in the resident's or child's record.

5. Medications

a. The provider shall have written policies and procedures that govern the safe administration and handling of all medication, to include the following:

i. a system for documentation and review of medication errors;

ii. self-administration of both prescription and nonprescription medications;

iii. handling medication taken by residents and children on pass; and

iv. a plan of action for residents and children who require emergency medication (e.g., Epipen, Benadryl).

b. The provider shall have a system in place to ensure that there is a sufficient supply of prescribed medication available for each resident and child at all times.

c. The provider shall ensure that medications are either self-administered or administered by persons with appropriate credentials, training, and expertise.

i. Effective August 1, 2016, all staff members who administer medication to residents or children under five years of age shall have medication administration training. However, providers licensed to care for children of residents or licensed to care for children under five years of age shall have staff trained in medication administration. Trained staff shall be scheduled for each shift when children of residents under five years of age are present in the facility. Training shall be obtained every two years from an approved child care health consultant. By virtue of his/her current license, a licensed practical nurse (LPN) or registered nurse (RN) shall be considered to have medication administration training.

d. There shall be written documentation requirements for the administration of all prescription and non-prescription medication, whether administered by staff, supervised by staff or self-administered. This documentation shall include:

i. resident's or child's name, date, medication name, dosage, and time administered;

ii. signature of person administering medication, if other than resident; and

iii. signature of person witnessing resident or child self administer medication (if applicable).

e. When residents administer medication to their own children, the medication administration record shall be documented by either the resident or by facility staff as indicated in Subparagraph D.5.d of this Section.

f. If prescription medication is not administered as prescribed or resident or child refuses to take medication, the physician ordering the medication shall be immediately notified and documentation noted to include:

i. resident's or child's name, date, and time;

ii. medication name and dosage;

iii. person attempting to administer medication, if other than resident or child;

iv. reason for refusal or medication not being given as prescribed;

v. name of staff notifying physician's office;

vi. date and time of notification to physician's office; and

vii. name of person notified and next steps (if applicable).

g. The provider shall ensure that any medication given to a resident or child for therapeutic and/or medical purposes is in accordance with the written order of a physician.

i. There shall be no standing orders for prescription medications.

ii. There shall be standing orders, signed by the physician, for nonprescription medications with directions from the physician indicating when he/she is to be contacted. The physician shall update standing orders annually.

iii. Copies of all written orders shall be maintained in the resident's or child's record.

iv. Medication shall not be used as a disciplinary measure, a convenience for staff, or as a substitute for adequate, appropriate programming.

v. Prescription medications shall be reviewed and renewed on at least an annual basis.

h. Residents and children shall be informed of any changes to their medications, prior to administration of any new or altered medications.

i. Residents, staff, and, where appropriate, residents' legal guardian(s) are educated on the potential benefits and negative side effects of the medication and are involved in decisions concerning the use of the medication.

j. The provider shall ensure that the prescribing physician is immediately informed of any side effects observed by staff, or any medication errors. Any such side effects or errors shall be promptly recorded in the resident's or child's record and the legal guardian(s) shall be notified verbally or in writing within 24 hours.

k. Discontinued and outdated medications and containers with worn, illegible, or missing labels shall be properly disposed of according to state law.

l. Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

i. External medications and internal medications shall be stored on separate shelves or in separate cabinets.

ii. All medication shall be kept under lock and key. Refrigerated medication shall be stored in a secure container with a lid to prevent access by children and avoid contamination of food.

m. Psychotropic medications shall be reviewed and renewed at least every 90 days by a licensed physician.

n. All medications shall be maintained in the original container/packaging as dispensed by the pharmacist.

o. A plan of care shall be developed for each resident or child who requires emergency medication (e.g., Epipen, Benadryl). The plan of care shall include:

i. method of administration;

ii. symptoms that would indicate the need for the medication;

iii. actions to take once symptoms occur;

iv. description of how to use the medication; and

v. signature and date of program director or medical personnel.

p. Medication administration records for emergency medication shall be maintained in accordance with Subparagraph D.5.d of this Section and shall also include the following:

- i. symptoms noted that indicated the need for the medication;
- ii. actions taken once symptoms occurred;
- iii. description of how medication was administered;
- iv. signature (not initials) of the staff member who administered the medication; and
- v. notification to legal guardian (date, time, and signature of person who contacted the legal guardian) following the administration of the emergency medication.

q. If the non-prescription medication label reads "to consult physician", a written authorization from a Louisiana, or adjacent state, licensed medical physician or dentist, shall be on file in order to administer the medication, and shall include the following information:

- i. child's name;
- ii. date of authorization;
- iii. medication name and strength; and
- iv. clear directions for use, including the route (e.g., oral, topical), dosage, and frequency, time, or schedule of medication.

6. Professional and Specialized Services

a. The provider shall monitor that residents and children receive specialized services to meet their needs; these services shall include but are not limited to:

- i. physical/occupational therapy;
- ii. speech pathology and audiology;
- iii. psychological and psychiatric services;
- iv. social work services;
- v. individual, group and family counseling; and
- vi. substance abuse counseling/drug or alcohol addiction treatment.

b. The provider shall monitor that all providers of professional and special services:

- i. record all significant contacts with the resident or child;
- ii. provide quarterly written summaries of the resident's or child's response to the service, the resident's or child's current status relative to the service, and the resident's or child's progress;
- iii. participate, as appropriate, in the development, implementation, and review of resident's service plans and aftercare plans and in the interdisciplinary team responsible for developing such plans;
- iv. provide services appropriately integrated into the overall program and provide training to direct service staff as needed to implement service plans;
- v. provide resident assessments/evaluations as needed for service plan development and revision.

c. The provider shall monitor that any provider of professional or special services (internal or external to the facility) meets the criteria noted below:

- i. have adequately qualified and, where appropriate, currently licensed or certified staff according to state or federal law;
- ii. have adequate space, facilities, and privacy;
- iii. have appropriate equipment, supplies, and resources.

d. The providers shall ensure that residents and children are evaluated for specialized services in a timely manner when a need is identified.

E. Recreation

1. The provider shall have a written policy and procedure for a recreation program that offers indoor and outdoor activities in which participation can be encouraged and motivated on the basis of individual interests and needs of the residents and children and the composition of the living group.

2. The provider shall provide recreational services based on the individual needs, interests, and functioning levels of the residents and children served. In planning recreational programs and activities, staff should assess the ages, interests, abilities and developmental and other needs of the residents and children served to determine the range of activities that are safe and appropriate. Residents and children shall be allowed time to be alone and to engage in solitary activities that they enjoy. There should be opportunities for group activities to develop spontaneously, such as group singing, dancing, storytelling, listening to records, games, etc. Recreational activities should be planned throughout the week.

3. Recreational objectives shall be included in each resident's service plan. Residents should be involved in planning and selecting activities as part of their individual service plan.

4. There shall be evidence that staff participating in recreation activities with the residents are appropriately informed of the resident's needs, problems, and service plans; communicate routinely with other direct service staff concerning residents; and have a means of providing in-put.

5. The provider shall provide adequate recreation and yard spaces to meet the needs and abilities of residents and children regardless of their disabilities. Recreation equipment and supplies shall be of sufficient quantity and variety to carry out the stated objectives of the provider's recreation plan. Recreational equipment should be selected in accordance with the number of residents and children, their ages and needs, and should allow for imaginative play, creativity, and development of leisure skills and physical fitness.

6. The provider shall utilize the recreational resources of the community whenever appropriate. The provider shall arrange the transportation and supervision required for maximum usage of community resources. Unless the restriction is part of the facility's master behavior program plan, access to such community resources shall not be denied or infringed except as may be required as part of the resident's service plan. Any such restrictions shall be specifically described in the service plan, together with the reasons such restrictions are necessary and the extent and duration of such restrictions.

F. Transportation

1. The provider shall have written policies and procedures to ensure that each resident is provided with transportation necessary to meet his/her needs as identified in the individualized service plan.

2. The provider shall have means of transporting residents and children in cases of emergency.

3. The provider shall ensure and document that any vehicle used in transporting residents or children, whether

such vehicle is operated by a staff member or any other person acting on behalf of the provider, is inspected and licensed in accordance with state law and carries current liability insurance. All vehicles used for the transportation of residents or children shall be maintained in a safe condition and in conformity with all applicable motor vehicle laws. Preventative maintenance shall be performed on a monthly basis to ensure the vehicles are maintained in working order. The provider shall maintain documentation supporting adherence to vehicle maintenance schedules and other services as indicated.

4. Any staff member of the provider or other person acting on behalf of the provider, operating a vehicle for the purpose of transporting residents or children shall maintain a current driver's license. The staff member operating the vehicle shall have the applicable type of driver's license to comply with the current motor vehicle laws.

5. The provider shall not transport residents nor children in the back or the bed of a truck.

6. The provider shall conform to all applicable state motor vehicle laws regarding the transport of residents and children.

7. The provider shall ensure that residents and children being transported in the vehicle are properly supervised while in the vehicle and during the trip. Residents nor children are to be unattended in the vehicle.

8. Vehicles used to transport residents and children shall not be identified in a manner that may embarrass or in any way produce notoriety for residents or children.

9. The provider shall ascertain the nature of any need or problem of a resident or child that might cause difficulties during transportation, such as seizures, a tendency toward motion sickness, or a disability. The provider shall communicate such information to the operator of any vehicle transporting residents or children.

10. The following additional arrangements are required for a provider serving residents or children with physical limitations:

a. a ramp device to permit entry and exit of a resident or child from the vehicle shall be provided for all vehicles except automobiles normally used to transport physically handicapped residents or children. A mechanical lift may be utilized if a ramp is also available in case of emergency;

b. in all vehicles except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle;

c. in all vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.

11. No resident or child shall be transported in any vehicle unless age-appropriate child restraints are utilized. In addition, transportation arrangements shall conform to state laws, including but not limited to those requiring the use of seat belts and child restraints.

12. Only one resident or child shall be restrained in a single safety belt.

13. The vehicle shall be maintained in good repair as evidenced by:

a. ventilation and heating systems shall be operational and used to maintain a comfortable temperature during transport;

b. the vehicle's engine shall be maintained in working mechanical order;

c. the vehicle's interior shall be clean and free of trash and debris;

d. the vehicle's seat coverings shall be in good repair.

14. The use or possession of alcohol, tobacco in any form, illegal substances or unauthorized potentially toxic substances, firearms (loaded or unloaded), or pellet or BB guns (loaded or unloaded) in any vehicle used to transport residents or children is prohibited.

15. The number of persons in a vehicle used to transport residents or children shall not exceed the manufacturer's recommended capacity.

16. The provider shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles (staff, contracted persons, etc.) used to transport residents or children.

17. The vehicle shall have evidence of a current safety inspection.

18. A visual inspection of the vehicle is required to ensure that no child was left on the vehicle. A staff person shall physically walk through the vehicle and inspect all seat surfaces, under all seats, and in all enclosed spaces and recesses in the vehicle's interior. The staff conducting the visual check shall record the time of the visual check inspection and sign his or her full name, indicating that no child was left on the vehicle. For field trips, staff shall check the vehicle and conduct a face-to-name count conducted prior to leaving facility for the destination, when destination is reached, before departing destination for return to facility, and upon return to facility. For all other transportation, the staff shall inspect the vehicle at the completion of each trip prior to the staff person exiting the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:823 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:985 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7119. Physical Environment

A. Physical Appearance and Conditions

1. The provider shall maintain all areas of the facility accessible to residents and children in good repair and free from any reasonably foreseeable hazard to health or safety. All structures on the grounds of the facility shall be maintained in good repair.

2. The provider shall have an effective pest control program to prevent insect and rodent infestation.

3. The provider shall maintain the grounds of the facility in good condition.

a. Garbage and rubbish stored outside shall be secured in noncombustible, covered containers and shall be removed on at least a weekly basis.

b. Trash collection receptacles shall be separate from play area.

c. Fences shall be in good repair.

d. Areas determined to be unsafe, including steep grades; cliffs, open pits, swimming pools, high voltage boosters or high-speed roads (45 mph or higher) shall be

fenced or have natural barriers to protect residents and children.

e. Playground equipment shall be so located, installed, and maintained as to ensure the safety of residents and children.

4. Residents and children shall have access to safe, suitable, outdoor recreational space and age-appropriate equipment.

5. The provider shall have at least 75 square feet of accessible exterior space for each resident. The exterior space shall be adequate to accommodate one-half the licensed capacity of the facility.

6. The outdoor play space used by children shall be enclosed with a permanent fence or other permanent barrier in such a manner as to protect the children from traffic hazards, to prevent the children from leaving the premises without proper supervision, and to prevent contact with animals or unauthorized persons.

7. All air conditioning/heating units, mechanical equipment, electrical equipment, or other hazardous equipment shall be inaccessible to children.

8. Culverts are prohibited within outdoor play spaces.

9. Areas where there are open cisterns, wells, ditches, fish ponds, swimming pools, and other bodies of water shall be made inaccessible to children by fencing and locked gates.

10. All equipment used by children shall be maintained in a clean, safe condition and in good repair.

11. Poisons, cleaning supplies, harmful chemicals, equipment, tools, kitchen knives or potentially dangerous utensils, and any substance with a warning label stating it is harmful to or that it should be kept out of reach of children, shall be locked away from and inaccessible to children. Whether these items are in a cabinet or in an entire room, the area shall be locked.

B. Interior Space

1. The provider shall have policies and procedures to ensure that the facility maintains a safe, clean, orderly, and homelike environment.

2. All equipment, furnishings, and interior spaces shall be clean and maintained at all times. The provider shall have a program in place to monitor regular maintenance, preventative maintenance, cleaning and repair of all equipment and furnishings that is performed on a routine basis. Written documentation of the maintenance and cleaning program activities shall be maintained by administration to include cleaning schedules and reports of repairs.

3. The facility shall have sufficient living and program space available for residents and children to gather for reading, study, relaxation, structured group activities, and visitation. Space shall be available that allows for confidentiality for family visits, counseling, groups, and meetings. The living areas shall contain such items as television, stereo, age-appropriate books, magazines, and newspapers.

4. A facility shall have a minimum of 60 square feet of unencumbered floor area per resident in living and dining areas accessible to residents and excluding halls, closets, bathrooms, bedrooms, staff or staff's family quarters, laundry areas, storage areas and office areas.

5. Each child shall be provided with an opportunity to safely and comfortably sit, crawl, toddle, walk, and play according to the child's stage of development and in a designated space apart from sleeping quarters each day in order to enhance development.

6. Computers that allow internet access by the children shall be equipped with monitoring or filtering software, or an analogous software protection, that limits children's access to inappropriate websites, e-mail, and instant messages.

7. Programs, movies, and video games shall be age appropriate.

8. A variety of books, educational materials, toys, and play materials shall be provided, organized, and displayed within children's reach so that they may select and return items independently.

9. For providers licensed to care for children of residents, at least one corded land line capable of incoming and outgoing calls for emergency purposes shall be accessible at all times at the facility.

C. Dining Areas

1. The provider shall have dining areas that permit residents, children, staff, and guests to eat together and create a homelike environment.

2. Dining areas shall be clean, well lit, ventilated, and equipped with dining tables and appropriate seating for the dining tables.

3. Highchairs shall be used in accordance with the manufacturer's instructions including restrictions based on age and minimum/maximum weight of infants and children. Staff shall ensure that the highchair manufacturer's restraint device is used when children are sitting in the highchair. Children who are too small or too large to be restrained using the manufacturer's restraint device shall not be placed in the highchair. Provider shall take into account the child's developmental stage, tolerances, and ability to sit up safely by themselves.

D. Bedrooms

1. Each resident and child shall have his/her own designated area for rest and sleep.

2. The provider shall ensure that each single occupancy bedroom space has a floor area of at least 70 square feet of unencumbered space and that each multiple occupancy bedroom space has a floor area of at least 60 square feet of unencumbered space for each occupant.

3. The provider shall not use a room with a ceiling height of less than 7 feet 6 inches as a bedroom space. In a room with varying ceiling height, only portions of the room with a ceiling height of at least 7 feet 6 inches are allowed in determining usable space.

4. The bedroom space for residents and children shall be decorated to allow for the personal tastes and expressions of the residents and children.

5. Any provider that licenses beds subsequent to April 2012, shall have bedroom space that does not permit more than two residents per designated bedroom space. All others shall not exceed four residents to occupy a designated space.

6. No resident over the age of five years shall occupy a bedroom with a member of the opposite sex, unless that individual is the resident's parent in accordance with R.S. 46:1403.

7. The provider shall ensure that the age of residents sharing bedroom space is not greater than four years in difference unless contraindicated based on family dynamics.

8. Each resident and child age one year and above shall have his/her own bed. The bed shall be longer than the resident or child is tall, no less than 30 inches wide, and shall have a clean, comfortable, nontoxic, fire retardant mattress.

9. The provider shall ensure that sheets, pillow, bedspread, and blankets are provided for each resident and child:

a. enuretic residents and children shall have mattresses with moisture resistant covers; and

b. sheets and pillowcases shall be changed at least weekly, but shall be changed more frequently if necessary. Sheets and coverings shall be changed immediately when soiled or wet.

10. Each resident shall have a solidly constructed bed. Cots or other portable beds shall be used on an emergency basis only and shall not be in use for longer than one week.

11. All bunk beds in use in a residential home shall be equipped with safety rails on the upper tier for a child under the age of 10, or for any child whose physical, mental, or emotional condition indicates the need for such protection. A child under 6 years of age shall not sleep on the upper bunk of a bunk bed. No beds shall be bunked higher than two tiers. The provider shall ensure that the uppermost mattress of any bunk bed shall be far enough from the ceiling to allow the occupant to sit up in bed.

12. Each resident and child shall have his/her own nightstand and dresser or other adequate storage space for private use in the bedroom.

13. There shall be a closet for hanging clothing in proximity to the bedroom occupied by the resident and child. For beds licensed after April 2012, there shall be a closet for hanging clothing within the bedroom or immediately adjacent to the bedroom. The closet shall not be within a bathroom.

14. No resident and her child shall share a bedroom with another resident.

15. A resident shall not be allowed to sleep in the same bed with her child.

E. Bathrooms

1. The facility shall have an adequate supply of hot and cold water.

2. The facility shall have toilets and baths or showers that allow for individual privacy. For beds licensed after April 2012, the following ratio shall be met. Whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed.

Lavatories	1:6 resident beds
Toilets	1:6 resident beds
Showers or tubs	1:6 resident beds

3. Bathrooms shall be so placed as to allow access without disturbing other residents or children during sleeping hours.

4. Each bathroom shall be properly equipped with toilet paper, towels, and soap.

5. Tubs and showers shall have slip proof surfaces.

6. Bathrooms shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the residents' and children's basic hygienic needs.

7. Each resident and child shall be provided personal hygiene items such as hairbrushes, toothbrushes, razors, etc.

8. Bathrooms shall be equipped to facilitate maximum self-help by residents and children. Bathrooms shall be large enough to permit staff assistance of residents and children, if necessary.

9. Toilets, washbasins, and other plumbing or sanitary facilities in a facility shall be maintained in good operating condition.

F. Kitchens

1. Kitchens used for meal preparations shall be provided with the necessary equipment for the preparation, storage, serving and clean-up of all meals for all of the residents, children, and staff regularly served. All equipment shall be maintained in proper working order.

2. The provider shall not use disposable dinnerware at meals except for special occasions such as picnics or barbecues or in an emergency situation unless the facility documents that such dinnerware is necessary to protect the health or safety of residents or children in care.

3. The provider shall ensure that all dishes, cups, and glasses used by residents and children in care are free from chips, cracks, or other defects and are in sufficient number to accommodate all the residents.

4. Animals, other than those used as service animals, shall not be permitted in food storage, preparation, and dining areas.

G. Laundry Space. The provider shall have a laundry space complete with washer and dryer.

H. Staff Quarters. The provider utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff and their children.

I. Administrative and Discussion Space

1. The provider shall provide a space that is distinct from residents' and children's living areas to serve as an administrative office for records, secretarial work, and bookkeeping.

2. The provider shall have a designated space to allow private discussions between individual residents, children, and staff.

3. There shall be a covering on the window.

J. Furnishings

1. The provider shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of residents and children shall be appropriately designed to suit the size and capabilities of these residents and children.

2. The provider shall replace or repair broken, run-down, or defective furnishings and equipment promptly.

K. Doors and Windows

1. When opened, all windows shall have insect screening. This screening shall be readily removable in emergencies and shall be in good repair.

2. All closets, bedrooms, and bathrooms shall have doors that allow egress from both sides.

3. Each window shall have a covering to provide privacy unless otherwise stipulated in the service plan.

L. Storage

1. The provider shall ensure that there are sufficient and appropriate storage facilities.

2. The provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

M. Electrical Systems

1. The provider shall ensure that all electrical equipment, wiring, switches, sockets, and outlets are maintained in good order and safe condition.

2. The provider shall ensure that any room, corridor, or stairway within a facility shall be well lit.

3. The provider shall ensure that exterior areas are well lit when dark.

N. Heating, Ventilation and Air Conditioning (HVAC)

1. The facility shall provide safe HVAC systems sufficient to maintain comfortable temperatures with a minimum of 65 degrees and maximum 80 degrees Fahrenheit in all indoor public and private areas in all seasons of the year.

2. The provider shall not use open flame heating equipment.

3. The use of portable heaters by the residents, staff, and children are strictly prohibited, unless in an emergency situation.

4. The provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of residents and children.

O. Safe Sleep Practices and Infant Furnishings

1. Only one infant shall be placed in each crib. All infants shall be placed on their backs for sleeping.

a. Written authorization from the child's physician is required for any other sleeping position. A notice of exception to this requirement shall be posted on or near the baby's crib and shall specify the alternate sleep position.

b. Written authorization from the child's physician is required for a child to sleep in a car seat or other similar device and shall include the amount of time that the child is to remain in said device. The written authorization shall be updated every three months and as changes occur.

2. Infants shall not be placed in positioning devices for sleeping unless the child has a note on file from the child's physician authorizing the device.

3. Infants who use pacifiers will be offered their pacifier when they are placed to sleep and it shall not be placed back in the mouth once the child is asleep.

4. Bibs shall not be worn by any child while asleep.

5. Infants shall not sleep in an adult bed, on a couch, or in a chair.

6. A safety-approved crib shall be made available for each infant.

a. Effective December 28, 2012, each crib in use shall meet U.S. Consumer Product Safety Commission (CPSC) requirements for full-size cribs as defined in 16 *Code of Federal Regulations* (CFR) 1219, or non full-size cribs as defined in 16 CFR 1220.

b. A crib meets the requirements of this Section if:

i. the crib has a tracking label which notes that the crib was manufactured on or after June 28, 2011; or

ii. the provider has a registration card which accompanies the crib and notes that the crib was manufactured on or after June 28, 2011; or

iii. the provider has obtained a children's product certificate (CPC) certifying the crib as meeting requirements for full-size cribs as defined in 16 *Code of Federal Regulations* (CFR) 1219, or non full-size cribs as defined in 16 CFR 1220.

7. Each crib shall be equipped with a firm mattress and well-fitting sheets. Mattresses shall be of standard size so that the mattress fits the crib frame without gaps of more than one-half inch. Homemade mattresses are prohibited.

8. The minimum height from the top of the mattress to the top of the crib rail shall be 20 inches at the highest point.

9. The mattress support system shall not be easily dislodged from any point of the crib by an upward force from underneath the crib.

10. Stackable cribs are prohibited.

11. Children sleeping in playpens or mesh-sided cribs is prohibited.

12. Cribs shall be free of toys and other soft bedding, including blankets, comforters, bumper pads, pillows, stuffed animals, and wedges when the child is in the crib.

13. Nothing shall be placed over the head or face of the infant.

14. While residents are awake, napping infants shall be checked on at least every 30 minutes.

P. Care of Children

1. Diapers shall be changed when wet or soiled.

2. While awake, children shall not remain in a crib/baby bed, swing, high chair, carrier, playpen, etc., for more than 30 consecutive minutes.

3. Pacifiers attached to strings or ribbons shall not be placed around a child's neck or attached to a child's clothing.

4. Staff shall adhere to proper techniques for lifting a child. Staff shall not lift a child by one or both of child's arms.

5. Children shall be changed and cleaned immediately following a toileting accident.

6. A child's request for toileting assistance shall be responded to promptly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:828 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:985 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7121. Emergency Preparedness

A. Emergency Plan

1. The provider, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect residents and children in the event of any emergency. The written overall plan of emergency procedures shall:

a. provide for the evacuation of residents and children to safe or sheltered areas. Evacuation plans shall include procedures for addressing both planned and unplanned evacuations to alternate locations within the city and long distance evacuations;

b. provide for training of staff and, as appropriate, residents and children in preventing, reporting, and responding to fires and other emergencies. The plan shall be reviewed with all staff at least annually. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed;

c. provide for training of staff in their emergency duties for all types of emergencies and the use of any fire fighting or other emergency equipment in their immediate work areas;

d. provide for adequate staffing in the event of an emergency;

e. ensure access to medication and other necessary supplies or equipment;

f. include shelter in place, lock down situations, and evacuations with regard to natural disasters, manmade disasters, bomb threats, and national security threats;

g. be appropriate for the area in which the facility is located and address any potential disaster due to that particular location;

h. include a system to account for all residents and children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site;

i. include lock down procedures for situations that may result in harm to persons inside the facility, including but not limited to a shooting, hostage incident, intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the program director or public safety personnel;

j. account for residents and children and ensure that no one leaves the designated safe area in a lock down situation. Staff shall secure facility entrances, ensuring that no unauthorized individual enters the facility;

k. include an individualized emergency plan (including medical contact information and additional supplies/equipment needed) for each resident and child with special needs;

l. ensure that residents and children who are prescribed prescription medication are able to receive medication if evacuated from facility;

m. include plans for nuclear evacuation if the facility is located within a 10-mile radius of a nuclear power plant or research facility;

n. include emergency contact information for staff in the event evacuation from the facility is necessary.

2. At a minimum, the plan shall be reviewed annually by the program director for accuracy and updated as changes occur. Documentation of review by the program director shall consist of the program director's signature and date;

3. The emergency and evacuation plan shall be submitted to the Licensing Section at least annually, any time changes are made, and upon the request of the Licensing Section.

4. If evacuation of children from the facility is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

- a. hand sanitizer;
- b. wet wipes;
- c. tissue;

- d. diapers for children who are not yet potty trained;
- e. plastic bags;
- f. food for all ages of children, including infant food and formula;
- g. disposable cups; and
- h. bottled water.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

B. Drills

1. The provider shall conduct fire drills at least once per month and within three days of admitting a new resident. There shall be at least one drill per shift every 90 days, at varying times of the day and the drills shall be documented. Effective August 1, 2016, documentation shall include:

- a. date and time of drill;
- b. names of residents and children present;
- c. amount of time to evacuate the facility;
- d. problems noted during drill and corrections noted; and
- e. signatures (not initials) of staff present.

2. The provider shall make every effort to ensure that staff, residents, and children recognize the nature and importance of fire drills.

C. Notification of Emergencies

1. The provider shall immediately notify the Licensing Section, other appropriate agencies, and the resident's legal guardian of any fire, disaster, or other emergency that may present a danger to residents or children or require their evacuation from the facility.

D. Access to Emergency Services

1. The provider shall have access to 24-hour telephone service.

2. The provider shall either prominently post telephone numbers of emergency services on or near each phone located in the facility, including the fire department, police department, medical facility, poison control (1-800-222-1222), ambulance services, 911, the facility's physical address or show evidence of an alternate means of immediate access to these services.

3. The provider shall ensure direct care staff can access emergency services at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:830 (April 2010), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7123. Safety Program

A. Policies and Procedures

1. The provider shall have policies and procedures for an on-going safety program that includes continuous inspection of the facility for possible hazards, continuous monitoring of safety equipment and investigation of all incidents.

B. General Safety Practices

1. The provider shall not possess or maintain or permit any other person to possess or maintain any firearm or chemical weapon on the premises with the exception of law enforcement personnel.

2. The provider shall ensure that all poisonous, toxic, and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be

maintained only as necessary and shall be used in a manner that ensures the safety of residents, staff, children, and visitors.

3. The provider shall ensure that a first aid kit is available in the living units and in all vehicles used to transport residents or children.

4. The provider shall prohibit the use of candles in the facility.

5. Power-driven equipment used by the provider shall be safe and properly maintained. Such equipment shall be used by residents only under the direct supervision of a staff member and according to state law.

6. The provider shall allow residents and children to swim only in areas determined to be safe and under the supervision of a person certified/trained in American Red Cross Basic Water Rescue or equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:831 (April 2010), amended by the Department of Children and Family Services, Licensing Section, LR 42:

Marketa Garner Walters
Secretary

1608#025

DECLARATION OF EMERGENCY

Office of the Governor Board of Pardons Committee on Parole

Parole Eligibility and Types (LAC 22:XI.304)

The Board of Pardons, Committee on Parole, has exercised the emergency provision in accordance with R.S. 49:953(B)(1), the Administrative Procedure Act, to adopt LAC 22:XI.304, Parole Consideration for Youth Offenders. This Emergency Rule, effective July 12, 2016, will remain in effect for a period of 120 days, unless renewed by the chairman of the Board of Pardons or until permanent rules are promulgated in accordance with law.

This Rule provides with respect to the United States Supreme Court decision in *Miller v. Alabama* in which held that the “Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” Act 239 of the 2013 Regular Legislative Session was passed in response to the United States Supreme Court decision in *Miller v. Alabama*. Act 239 applies prospectively for offenders who were sentenced to life imprisonment (without parole eligibility) for a conviction for first or second-degree murder. In January 2016, the United States Supreme Court rendered its decision in *Montgomery v. Louisiana* and determined that the *Miller* decision must also be applied retroactively; however, in Louisiana no section of the *Revised Statutes* is retroactive unless that is expressly stated (R.S. 1:2). This action is necessary because the legislative measure that was presented in the 2016 Regular Legislative Session (House Bill 264) to address the retroactivity issue in these cases failed to pass in the final moments of the session.

This Rule provides guidelines for the Committee on Parole for parole consideration for juvenile offenders

sentenced to life imprisonment prior to Act 239 of 2013. These guidelines are not intended to imply or guarantee eventual freedom, but to provide meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation as mandated by *Miller*.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Committee on Parole

Chapter 3. Parole—Eligibility and Types

§304. Parole Consideration for Youth Offenders

A. Once a judicial determination is rendered removing the parole restriction, a person sentenced to life imprisonment for a homicide committed when the offender was under the age of 18 and who was sentenced prior to Act 239 of 2013 may be considered for parole once all of the following conditions are met.

1. The offender has served 35 years of the sentence imposed.

2. The offender has not had any major (schedule B) disciplinary offenses in the 12 consecutive months prior to the parole hearing.

3. The offender has completed 100 hours of prerelease programming in accordance with R.S. 15:827.1.

4. The offender has completed substance abuse programming as applicable.

5. The offender has obtained a high school equivalency (HSE) certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a HSE certification due to a learning disability. If the offender is deemed incapable of obtaining a HSE certification, the offender must have completed at least one of the following:

- a. a literacy program;
- b. an adult basic education program; or
- c. a job skills training program.

6. The offender has obtained a low-risk level designation by a validated risk assessment instrument approved by the secretary of the Louisiana Department of Public Safety and Corrections.

B. For each offender eligible for parole consideration, the parole panel shall give great weight to the fact that youth are deemed to be less responsible than adults for their actions. At a minimum the parole panel shall consider mitigating factors for offenders sentenced before the age of 18, including, but not limited to:

1. the age and life circumstances of the offender as of the date of the commission of the crime;

2. the hallmark features of youth at the time of commission of the crime, including but not limited to, diminished understanding or risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;

3. whether the offender has demonstrated remorse, growth, and increased maturity since the date of the commission of the crime;

4. the offender’s contributions to the welfare of other persons through service;

5. when appropriate, the offender’s efforts to overcome substance abuse, addiction, or trauma;

6. lack of education or obstacles that the offender may have faced as an adolescent in the adult correctional system;

7. the overall degree of the offender's rehabilitation considering the offender's age and life circumstances at the time of the crime, the nature of circumstances of the offender's involvement in the crime, and the offender's opportunities for rehabilitation while incarcerated.

C. The parole panel shall consider a current mental health evaluation of the offender regarding the offender's background and current functioning, especially in regards to factors identified by the United States Supreme Court in *Miller v. Alabama* as important considerations in the sentencing of adolescents.

D. To deny parole, the parole panel must determine that the need for continued incarceration of the offender outweighs the benefits to the offender and society that would result from the offender's release to the community.

E. Each parole panel member must articulate the basis of their individual decision both orally and in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons and Committee on Parole, LR 42:

Sheryl M. Ranatza
Board Chair

1608#003

DECLARATION OF EMERGENCY

Department of Health Board of Pharmacy

Accreditation of Pharmacy Technician Training Programs (LAC 46:LIII.905)

The Louisiana Board of Pharmacy is exercising the emergency provisions of the Administrative Procedure Act, specifically at R.S. 49:953(B), to amend its rules governing the process of obtaining a pharmacy technician certificate by delaying the implementation of the requirement to complete a nationally-accredited pharmacy technician training program as one of the qualifications to obtain the credential.

Prior to June 2013, the Rule required the pharmacy technician candidate to complete a training program that was approved by the board. In response to stakeholder input requesting flexibility in how those programs were to be established, the board permitted programs to be established at individual pharmacies in addition to universities, community and technical colleges, as well as proprietary schools. Over the course of approximately 10 years, the board tracked the state's pass rate on the national certification program and observed a steady decrease. The board determined that workplace training alone was not sufficient and, in June 2013 instituted a change, to begin in January 2016, which would require the training program to be nationally accredited. The three-year delay was intended to increase the number of such nationally accredited programs in the state.

During their meeting in November 2015, the board entertained a request from some chain pharmacies to further delay the implementation of the accreditation requirement until 2020, citing their concerns with some of the accreditation standards. The board took note of the increased number of accredited programs in the state, from one in

2013 to over a dozen in 2015. The board also took note of the continuing decrease in the state pass rate on the national certification examination, with a 45 percent pass rate in 2015. The board also received input the requirement should be transferred from those persons submitting applications for the technician certificate to those persons submitting applications for the technician candidate registration, to eliminate the difficulty for persons who start under the previous Rule and attempt to finish under the new Rule. The board agreed to a one-year delay in the accreditation requirement, and since there is not sufficient time to promulgate a change in the Rule before the current January 1, 2016 implementation date, the board has determined that an Emergency Rule is necessary. During the one-year delay, the board plans to promulgate the additional change to transfer the requirement for completion of an accredited program as a qualification for the pharmacy technician certificate to require enrollment in an accredited program as a qualification for the pharmacy technician candidate registration.

The board has determined that failure to implement the Emergency Rule will cause interruptions in the licensure process for pharmacy technicians, potentially causing a decrease in the number of pharmacy technicians in the available workforce. The board has determined this Emergency Rule is necessary to prevent imminent peril to the public health, safety, and welfare. The original Declaration of Emergency was effective November 30, 2015. Although the board is working on the changes, they need more time; therefore, they have directed the re-issuance of the Emergency Rule, effective July 22, 2016. The re-issued Rule shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever shall first occur.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 9. Pharmacy Technicians

§905. Pharmacy Technician Certificate

A. - A.3.a. ...

b. For those applicants submitting applications on or after January 1, 2017, the applicant shall demonstrate successful completion of a nationally-accredited and board-approved pharmacy technician training program, as evidenced by a valid and legible copy of the appropriate credential from that program.

A.4. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, repromulgated LR 19:1025 (August 1993), LR 30:2486 (November 2004), effective January 1, 2005, amended LR 38:1235 (May 2012), LR 39:1777 (July 2013), amended by the Department of Health, Board of Pharmacy, LR 42:

Malcolm J. Broussard
Executive Director

1608#010

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Disproportionate Share Hospital Payments Inpatient Psychiatric Services Reimbursement Rate Reduction (LAC 50:V.959, 2709 and 2903)

The Department of Health, Bureau of Health Services Financing amends LAC 50:V.959, §2709 and §2903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services in order to provide supplemental Medicaid payments to non-rural, non-state acute care hospitals that enter into a cooperative endeavor agreement with the department to provide inpatient psychiatric services (*Louisiana Register*, Volume 39, Number 2). The department amended the provisions governing disproportionate share hospital (DSH) payments to non-state distinct part psychiatric units that enter into a cooperative endeavor agreement with the department's Office of Behavioral Health (*Louisiana Register*, Volume 39, Number 3).

As a result of a budgetary shortfall in state fiscal year 2016, the department promulgated an Emergency Rule which amended the provisions governing DSH payments to reduce the payments made to non-rural, non-state acute care hospitals for inpatient psychiatric services (*Louisiana Register*, Volume 41, Number 10). The department determined that it was necessary to amend the provisions of the October 1, 2015 Emergency Rule in order to revise these provisions and to correct the formatting of these provisions to assure that these provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code* (LAC) (*Louisiana Register*, Volume 42, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2016 Emergency Rule. This action is being taken to avoid a budget deficit in the Medical Assistance Program.

Effective September 18, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to reduce the payments made to non-rural, non-state acute care hospitals for inpatient psychiatric services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§959. Inpatient Psychiatric Hospital Services

A. - L. ...

M. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 39:94 (January 2013), LR 39:323 (February 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Subpart 3. Disproportionate Share Hospital Payments Chapter 27. Qualifying Hospitals

§2709. Distinct Part Psychiatric Units

A. - C. ...

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1627 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:505 (March 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Chapter 29. Public-Private Partnerships

§2903. Reimbursement Methodology

A. Free-Standing Psychiatric Hospitals. Effective for dates of service on or after October 1, 2015, the per diem rate paid to free-standing psychiatric hospitals shall be reduced by 5 percent of the rate in effect on September 30, 2015. The new per diem rate shall be \$552.02 per day.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made. Payments shall be made on a monthly basis.

2. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

B. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:2259 (November 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#067

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Healthcare Services Provider Fees
Emergency Ambulance Service Providers
(LAC 48:I.Chapter 40)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.4001, 4003 and 4007 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 46:2625. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of Management and Finance, amended and repromulgated the regulations governing provider fees for certain health care services pertaining to the administration of fees and the rights and obligations of service providers on whom such fees are imposed (*Louisiana Register*, Volume 26, Number 7).

Act 305 of the 2016 Regular Session of the Louisiana Legislature directed the Department of Health to establish qualifying criteria and implement a provider fee for qualified providers of emergency ground ambulance services.

In compliance with Act 305, the Department of Health, Bureau of Health Services Financing amends the provisions governing provider fees for certain health care services in order to implement a provider fee assessment for qualifying emergency ground ambulance service providers.

This action is being taken to avoid a budget deficit by securing new funding through increased revenue collections. It is estimated that implementation of this Emergency Rule will increase revenue collections in the Medicaid Program by approximately \$2,092,091 for state fiscal year 2016-2017.

Effective August 1, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing provider fees for certain health care services in order to implement a provider fee assessment for qualifying emergency ground ambulance service providers.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. Definition

Net Operating Revenue—the gross revenues of an emergency ground ambulance service provider for the provision of emergency ground ambulance transportation services, excluding any Medicaid reimbursement, less any deducted amounts for bad debts, charity care and payer discounts.

* * *

B. - D. ...

E. Medical Transportation Services. Effective for dates of service on or after August 1, 2016, qualifying emergency ground ambulance service providers shall be assessed a fee of 1 1/2 percent of net operating revenue.

1. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to be assessed the applicable fee. The ambulance service provider must be:

- a. licensed by the state of Louisiana;
- b. enrolled as a Louisiana Medicaid provider;
- c. a provider of emergency ground ambulance transportation services as defined in 42 CFR 440.170 and Medical and Remedial Care and Services, Item 24.a; and
- d. a non-federal, non-public provider in the state of Louisiana, as defined in 42 CFR 433.68(c)(1), of emergency ground ambulance services that is contracted with a unit of local or parish government in the state of Louisiana for the provision of emergency ground ambulance transportation on a regular 24-hour per day and seven days per week basis.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§4003. Due Date for Submission of Reports and Payment of Fees

A. ...

B. Medical Transportation Services. Effective August 1, 2016, qualified ambulance service providers will be assessed a fee at the end of each quarter not to exceed 1 1/2 percent of the net operating revenue of emergency ground ambulance service providers.

1. Qualified ambulance service providers will provide the Department of Health (department) a monthly net operating revenue report for emergency ground ambulance transportation services by the fifteenth business day of the following month.

2. Qualified ambulance service providers will be issued a quarterly notice within 30 days from the end of the quarter. Payment will be due to the department by qualified ambulance service provider within 30 days from date of notice.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§4007. Delinquent and/or Unpaid Fees

A. Interest on Unpaid Provider Fees other than Medical Transportation Provider Fees. When the provider fails to pay the fee due, or any portion thereof, on or before the date it becomes delinquent, interest at the rate of one and one-half percent per month compounded daily shall be assessed on the unpaid balance until paid. In the case of interest on a penalty assessed, such interest shall be computed beginning 15 days from the date of notification of assessment until paid.

B. Collection of Delinquent Provider Fee other than Medical Transportation Provider Fees

B.1. - D. ...

E. Emergency Ground Ambulance Service Provider Fees

1. Penalties and Interest for Non-Payment of Assessment

a. If the department audits a qualifying ambulance service provider's records and determines the net operating revenue reported is incorrect for the assessment collected, the department shall fine the qualifying ambulance service provider .15 percent of the corrected assessment. The fine is payable within 30 days of the invoice.

b. If a qualifying ambulance service provider fails to fully pay its assessment on or before the due date, the department shall assess a late penalty of .15 percent of the quarterly calculated assessment. The department shall reserve the right to suspend all Medicaid payments to a qualifying ground ambulance service provider until the provider pays the assessment and penalty due in full or until the provider and the department reach a negotiated settlement.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:1114 (October 1994), LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#012

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Managed Care for Physical and Basic Behavioral Health
Non-Emergency Medical Transportation
(LAC 50:I.3103)

The Department of Health, Bureau of Health Services Financing amends LAC 50:I.3103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing managed care for physical and basic behavioral health in order to reflect the integration of specialized behavioral health services into Bayou Health as a result of the narrowing of the statewide management organization's scope of service administration for certain behavioral health services (*Louisiana Register*, Volume 41, Number 11). The department promulgated an Emergency Rule which amended the provisions governing managed care for physical and basic behavioral health to provide clarification regarding the inclusion of non-emergency medical transportation services (*Louisiana Register*, Volume 42, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2016 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance program and to promote the health and welfare of Medicaid recipients by ensuring continued access to non-emergency medical transportation services.

Effective August 30, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing managed care for physical and basic behavioral health.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Managed Care for Physical and Basic Behavioral Health

Chapter 31. General Provisions

§3103. Recipient Participation

A. - B. ...

1. Participation in an MCO for the following participants is mandatory for specialized behavioral health and non-emergency medical transportation (NEMT) services (ambulance and non-ambulance) only, and is voluntary for physical health services:

B.1.a. - D. ...

E. Mandatory MCO Populations - Specialized Behavioral Health Services and Non-Emergency Ambulance Services Only

1. The following populations are mandatory enrollees in Bayou Health for specialized behavioral health services and non-emergency ambulance services only:

a. - b. ...

F. Mandatory MCO Populations - Specialized Behavioral Health and NEMT Services (Ambulance and Non-Ambulance) Only

F.1. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 40:310 (February 2014), LR 40:1096 (June 2014), LR 40:2258 (November 2014), LR 41:929 (May 2015), LR 41:2363 (November 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#068

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Medicaid Eligibility
Medically Needy Program
(LAC 50:III.2313)

The Department of Health, Bureau of Health Services Financing hereby repeals and replaces all of the Rules governing the Medically Needy Program, and adopts LAC 50:III.2313 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule in order to reinstate the Title XIX Medically Needy Program (MNP) and to establish coverage restrictions (*Louisiana Register*, Volume 24, Number 5). All behavioral health services were restricted from coverage under the Medically Needy Program.

In February 2012, the department adopted provisions in the Medicaid Program to restructure the existing behavioral health services delivery system into a comprehensive service delivery model called the Louisiana Behavioral Health Partnership (LBHP). Certain recipients enrolled in the Medically Needy Program, whose Medicaid eligibility was based solely on the provisions of §1915(i) of Title XIX of the Social Security Act, were eligible to only receive behavioral health services. These recipients had difficulties accessing behavioral health services through the LBHP due to the service restrictions currently in place in the Medically Needy Program.

Therefore, the department promulgated an Emergency Rule which revised the provisions governing the Medically Needy Program in order to include behavioral health coverage for MNP recipients that qualified for the program under the provisions of §1915(i) of Title XIX of the Social Security Act. This Emergency Rule also repealed and replaced all of the Rules governing the Medically Needy Program in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in a codified format (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the Medically Needy Program to further clarify the provisions governing covered services (*Louisiana Register*, Volume 39, Number 4). The department promulgated an Emergency Rule which amended the provisions of the April 20, 2013 Emergency Rule in order to further clarify these provisions (*Louisiana Register*,

Volume 40, Number 1). The department subsequently promulgated an Emergency Rule which amended the provisions of the January 20, 2014 Emergency Rule in order to further clarify these provisions (*Louisiana Register*, Volume 41, Number 8). The department promulgated an Emergency Rule to amend the provisions of the August 20, 2015 Emergency Rule in order to further clarify the provisions governing allowable medical expenses for spend-down MNP coverage (*Louisiana Register*, Volume 41, Number 9).

In January 2016, the department terminated behavioral health services rendered to adults under the 1915(i) State Plan authority. Hence, the Department of Health, Bureau of Health Services Financing has now determined that it is necessary to amend the provisions of the September 20, 2015 Emergency Rule governing the Medically Needy Program in order to remove references to behavioral health services provided through the Louisiana Behavioral Health Partnership to recipients that qualified for the program under the 1915(i) State Plan authority.

This action is being taken to promote the health and welfare of MNP recipients who are in need of services, and to assure their continued access to these services, as well as to ensure that these provisions are promulgated in a clear and concise manner for inclusion in the *Louisiana Administrative Code*.

Effective August 1, 2016, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the September 20, 2015 Emergency Rule governing the Medically Needy Program as a result of the termination of behavioral health services rendered to MNP recipients under the 1915(i) State Plan authority.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2313. Medically Needy Program

A. The Medically Needy Program (MNP) provides Medicaid coverage when an individual's or family's income and/or resources are sufficient to meet basic needs in a categorical assistance program, but not sufficient to meet medical needs according to the MNP standards.

1. The income standard used in the MNP is the federal medically needy income eligibility standard (MNIIES).

2. Resources are not applicable to modified adjusted gross income (MAGI) related MNP cases.

3. MNP eligibility cannot be considered prior to establishing income ineligibility in a categorically related assistance group.

B. MNP Eligibility Groups

1. Regular Medically Needy

a. Prior to the implementation of the MAGI income standards, parents who met all of the parent and caretaker relative (PCR) group categorical requirements and whose income was at or below the MNIIES were eligible to receive regular MNP benefits. With the implementation of the MAGI-based methodology for determining income and household composition and the conversion of net income standards to MAGI equivalent income standards, individuals who would have been eligible for the regular Medically

Needy Program are now eligible to receive Medicaid benefits under the parent and caretaker relative eligibility group. Regular medically needy coverage is only applicable to individuals included in the MAGI-related category of assistance.

b. Individuals in the non-MAGI [formerly aged (A-), blind (B-), or disability (D-)] related assistance groups cannot receive Regular MNP.

c. The certification period for Regular MNP cannot exceed six months.

2. Spend-Down Medically Needy

a. Spend-Down MNP is considered after establishing financial ineligibility in categorically related Medicaid programs and excess income remains. Allowable medical bills/expenses incurred by the income unit, including skilled nursing facility coinsurance expenses, are used to reduce (spend-down) the income to the allowable MNP limits.

b. The following individuals may be considered for spend-down MNP:

i. individuals who meet all of the parent and caretaker relative group requirements;

ii. non-institutionalized individuals (non-MAGI related); and

iii. institutionalized individuals or couples (non-MAGI related) with Medicare co-insurance whose income has been spent down.

c. The certification period for spend-down MNP begins no earlier than the spend-down date and shall not exceed three months.

3. Long Term Care (LTC) Spend-Down MNP

a. Individuals residing in Medicaid LTC facilities, not on Medicare-coinsurance with resources within the limits, but whose income exceeds the special income limits (three times the current federal benefit rate), are eligible for LTC Spend-Down MNP.

B.4. - B.4.c. Repealed.

C. The following services are covered in the Medically Needy Program:

1. inpatient and outpatient hospital services;
2. intermediate care facilities for persons with intellectual disabilities (ICF/ID) services;
3. intermediate care and skilled nursing facility (ICF and SNF) services;
4. physician services, including medical/surgical services by a dentist;
5. nurse midwife services;
6. certified registered nurse anesthetist (CRNA) and anesthesiologist services;
7. laboratory and x-ray services;
8. prescription drugs;
9. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services;
10. rural health clinic services;
11. hemodialysis clinic services;
12. ambulatory surgical center services;
13. prenatal clinic services;
14. federally qualified health center services;
15. family planning services;
16. durable medical equipment;
17. rehabilitation services (physical therapy, occupational therapy, speech therapy);

18. nurse practitioner services;
19. medical transportation services (emergency and non-emergency);
20. home health services for individuals needing skilled nursing services;
21. chiropractic services;
22. optometry services;
23. podiatry services;
24. radiation therapy; and
25. behavioral health services.

D. - D.9. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#066

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services
Enhanced Reimbursements
(LAC 50:XXVII.331)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:XXVII.331 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 305 of the 2016 Regular Legislative Session directed the Department of Health to provide enhanced reimbursements to qualified providers of emergency ground ambulance services that are assessed a provider fee.

In order to comply with the requirements of Act 305, the department adopts provisions to establish enhanced Medicaid reimbursements through the Supplemental Payment Program for qualifying emergency ground ambulance service providers. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ground ambulance services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$3,464,645 for state fiscal year 2016-2017.

Effective August 1, 2016, the Department of Health, Bureau of Health Services Financing adopts the provisions to establish enhanced Medicaid reimbursements through the Supplemental Payment Program for qualifying emergency ground ambulance service providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§331. Enhanced Reimbursements for Qualifying Emergency Ground Ambulance Service Providers

A. Effective for dates of service on or after August 1, 2016, qualifying emergency ambulance service providers assessed a fee as outlined in LAC 48:I.4001.E.1.a-d shall receive enhanced reimbursement for emergency ground ambulance transportation services rendered during the quarter through the Supplemental Payment Program described in State Plan Amendment transmittal number 11-23.

B. Calculation of Average Commercial Rate

1. The enhanced reimbursement shall be determined in a manner to bring the payments for these services up to the average commercial rate level as described in Subparagraph C.3.h. The *average commercial rate level* is defined as the average amount payable by the commercial payers for the same service.

2. The department shall align the paid Medicaid claims with the Medicare fees for each healthcare common procedure coding system (HCPCS) or current procedure terminology (CPT) code for the ambulance provider and calculate the Medicare payment for those claims.

3. The department shall calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims.

4. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

C. Payment Methodology

1. The enhanced reimbursement to each qualifying emergency ground ambulance service provider shall not exceed the sum of the difference between the Medicaid payments otherwise made to these providers for the provision of emergency ground ambulance transportation services and the average amount that would have been paid at the equivalent community rate.

2. The enhanced reimbursement shall be determined in a manner to bring payments for these services up to the community rate level.

a. *Community Rate*—the average amount payable by commercial insurers for the same services.

3. The specific methodology to be used in establishing the enhanced reimbursement payment for ambulance providers is as follows.

a. The department shall identify Medicaid ambulance service providers that qualify to receive enhanced reimbursement Medicaid payments for the provision of emergency ground ambulance transportation services.

b. For each Medicaid ambulance service provider identified to receive enhanced reimbursement Medicaid

payments, the department shall identify the emergency ground ambulance transportation services for which the provider is eligible to be reimbursed.

c. For each Medicaid ambulance service provider described in Subparagraph C.3.a of this Section, the department shall calculate the reimbursement paid to the provider for the provision of emergency ground ambulance transportation services identified under Subparagraph C.3.b of this Section.

d. For each Medicaid ambulance service provider described in Subparagraph C.3.a of this Section, the department shall calculate the provider's equivalent community rate for each of the provider's services identified under Subparagraph C.3.b of this Section.

e. For each Medicaid ambulance service provider described in Subparagraph C.3.a of this Section, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency ground ambulance transportation services under Subparagraph C.3.c of this Section from an amount equal to the amount calculated for each of the emergency ground ambulance transportation services under Subparagraph C.3.d of this Section.

f. For each Medicaid ambulance service provider described in Subparagraph C.3.a of this Section, the department shall calculate the sum of each of the amounts calculated for emergency ground ambulance transportation services under Subparagraph C.3.e of this Section.

g. For each Medicaid ambulance service provider described in Subparagraph C.3.a of this Section, the department shall calculate each provider's upper payment limit by totaling the provider's total Medicaid payment differential from Subparagraph C.3.f of this Section.

h. The department shall reimburse providers identified in Subparagraph C.3.a of this Section up to 100 percent of the provider's average commercial rate.

D. Effective Date of Payment

1. The enhanced reimbursement payment shall be made effective for emergency ground ambulance transportation services provided on or after August 1, 2016. This payment is based on the average amount that would have been paid at the equivalent community rate.

2. After the initial calculation for fiscal year 2015-2016, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually but shall be made no less than every three years.

E. Maximum Payment

1. The total maximum amount to be paid by the department to any individually qualified Medicaid ambulance service provider for enhanced reimbursement Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under Subparagraph C.3.f of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#013

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Nursing Facilities
Licensing Standards
(LAC 48:I.9704, 9707, and Chapter 99)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.9704, §9707 and Chapter 99 in the Medical Assistance Program as authorized by R.S. 36:254. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the licensing standards governing nursing facilities in order to clarify the provisions for Alzheimer's special care disclosure, and to revise the provisions governing approval of plans and physical environment (*Louisiana Register*, Volume 40, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2014 Emergency Rule. This action is being taken to promote the health and well-being of Louisiana residents in nursing facilities.

Effective September 13, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing the licensing standards for nursing facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter A. General Provisions

§9704. Alzheimer's Special Care Disclosure

A. - D.5. ...

E. The provider's Alzheimer's special care disclosure documentation shall contain the following information:

1. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1300.121-1300.125.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 27:312 (March 2001), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9707. Approval of Plans

A. Plans and specifications for new construction of, or to, a nursing facility, and for any major alterations or renovations to a nursing facility, shall be submitted for approval to the Department of Public Safety, Office of the State Fire Marshal for review in accordance with R.S. 40:1563(L), R.S.40:1574 and LAC 55:V:Chapter 3.

1. Plans and specifications for new construction, major alterations, and major renovations shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer where required by the Louisiana architecture and engineering licensing laws of R.S. 37:141 et seq., R.S. 37:681 et seq. and respective implementing regulations.

2. No residential conversions shall be considered for a nursing facility license.

B. The plans and specifications shall comply with all of the following:

1. DHH nursing facility licensing requirements and the Office of Public Health's (OPH) nursing home regulations (see LAC 51:XX); and

2. the Office of the State Fire Marshal's requirements for plan submittals and compliance with all codes required by that office.

2.a - 3. Repealed.

C. Notice of satisfactory review from the department and the Office of the State Fire Marshal constitutes compliance with this requirement, if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes, or rules of any responsible agency.

C.1 - E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:46 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Chapter 99. Nursing Facilities

Subchapter A. Physical Environment

§9901. General Provisions

A. The nursing facility shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

B. The nursing facility shall provide a safe, clean, orderly, homelike environment.

C. If the nursing facility determines that a licensing provision of this Subchapter A prohibits the provision of a culture change environment, the nursing facility may submit a written waiver request to the Health Standards Section (HSS) of the Department of Health and Hospitals, asking that the provision be waived and providing an alternative to the licensing provision of this Subchapter. The department shall consider such written waiver request, shall consider the health and safety concerns of such request and the proposed alternative, and shall submit a written response to the nursing facility within 60 days of receipt of such waiver request.

D. Any construction-related waiver or variance request of any provision of the LAC Title 51, *Public Health—Sanitary Code* shall be submitted in writing to the state health officer for his/her consideration.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9903. Nurse/Care Team Work Areas

A. Each floor and/or household of a nursing facility shall have a nurse/care team work area in locations that are suitable to perform necessary functions. These nurse/care team work areas may be in centralized or decentralized locations, as long as the locations are suitable to perform necessary functions.

1. Each centralized nurse/care team area shall be equipped with working space and accommodations for recording and charting purposes by nursing facility staff with secured storage space for in-house resident records.

a. Exception. Accommodations for recording and charting are not required at the central work area where decentralized work areas are provided.

2. Each decentralized work area, where provided, shall contain working space and accommodations for recording and charting purposes with secured storage space for administrative activities and in-house resident records.

3. The nurse/care team work areas shall be equipped to receive resident calls through a communication system from resident rooms, toileting and bathing facilities.

a. In the case of an existing centralized nurse/care team work area, this communication may be through audible or visible signals and may include wireless systems.

b. In those facilities that have moved to decentralized nurse/care team work areas, the facility may utilize other electronic systems that provide direct communication from the resident to the staff.

B. There shall be a medicine preparation room or area. Such room or area shall contain a work counter, preparation sink, refrigerator, task lighting and lockable storage for controlled drugs.

C. There shall be a clean utility room on each floor designed for proper storage of nursing equipment and supplies. Such room shall contain task lighting and storage for clean and sterile supplies.

D. There shall be a separate soiled utility room designed for proper cleansing, disinfecting and sterilizing of equipment and supplies. At a minimum, it shall contain a clinical sink or equivalent flushing-rim sink with a rinsing hose or bed pan sanitizer, hand washing facilities, soiled linen receptacles and waste receptacle. Each floor of a nursing facility shall have a soiled utility room.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9905. Resident Rooms

A. ...

B. Each resident's bedroom shall have a floor at or above grade level, shall accommodate a maximum of two residents, and be so situated that passage through another resident's bedroom is unnecessary.

1. Exception. Resident bedrooms in existing nursing facilities shall be permitted to accommodate no more than four residents unless the cost of renovations to the existing nursing facility exceeds the values stipulated by R.S. 40:1574.

C. Private resident bedrooms shall measure at least 121 square feet of bedroom area, exclusive of wardrobes, closet space, vestibules or toilet rooms, and shall have a clear width of not less than 11 feet.

D. Double occupancy resident bedrooms containing two beds shall measure at least 198 square feet of bedroom area, exclusive of wardrobes, closet space, vestibules or toilet rooms, and shall have a clear width of not less than 11 feet.

E. In existing nursing facilities, or portions thereof, where plans were approved by the department and the Office of State Fire Marshal prior to January 20, 1998, there shall be at least three feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery.

F. Each resident's bedroom shall have at least one window to the outside atmosphere with a maximum sill height of 36 inches. Windows with sills less than 30 inches from the floor shall be provided with guard rails.

1. Each resident's bedroom window shall be provided with shades, curtains, drapes, or blinds.

2. Operable windows shall be provided with screens.

G - H. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:62 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9907. Resident Room Furnishings

A. ...

1. a clean supportive frame in good repair;

2. - 5. ...

B. Screens or noncombustible ceiling-suspended privacy curtains which extend around the bed shall be provided for each bed in multi-resident bedrooms to assure resident privacy. Total visual privacy without obstructing the passage of other residents either to the corridor, closet, lavatory, or adjacent toilet room nor fully encapsulating the bedroom window shall be provided.

C. Each resident shall be provided with a call device located within reach of the resident.

D. Each resident shall be provided a bedside table with at least two drawers. As appropriate to resident needs, each resident shall have a comfortable chair with armrests, waste receptacle, and access to mirror unless medically contraindicated.

1. Each resident who has tray service to his/her room shall be provided with an adjustable overbed table positioned so that the resident can eat comfortably.

E. Each resident shall be provided an individual closet that has minimum dimensions of 1 foot 10 inches in depth by 2 feet 6 inches in width. A clothes rod and shelf shall be

provided that is either adjustable or installed at heights accessible to the resident. Accommodations shall be made for storage of full-length garments. The shelf may be omitted if the closet provides at least two drawers. The following exceptions may apply.

1. Individual wardrobe units having nominal dimensions of 1 foot 10 inches in depth by 2 feet 6 inches in width are permitted. A clothes rod and shelf shall be provided that is either adjustable or installed at heights accessible to the resident. Accommodations shall be made for storage of full-length garments. The shelf may be omitted if the unit provides at least two drawers.

2. In existing nursing facilities, or portions thereof, where plans were approved by the department and the State Fire Marshal prior to January 20, 1998, each resident shall be provided an individual wardrobe or closet that has nominal dimensions of 1 foot 10 inches in depth by 2 feet in width.

F. Each resident shall be provided with a bedside light or over-the-bed light capable of being operated from the bed.

1. Nursing facilities, or portions thereof, where plans were approved by the department and the State Fire Marshal prior to May 1, 1997 shall be exempt from this provision.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9909. Locked Units, Restraints and Seclusion

A. Locked Units

1. Nursing facilities may have specific locked units for housing residents suffering from severe dementia or Alzheimer's disease. The locked units may only house, limit and restrict free access of those residents suffering from severe dementia or Alzheimer's who may be a danger to themselves or others.

2. Nursing facilities providing locked units shall develop admission criteria. There shall be documentation in the resident's record to indicate the unit is the least restrictive environment possible, and placement in the unit is needed to facilitate meeting the resident's needs.

3. Guidelines for admission shall be provided to the resident, his/her family and his/her authorized representative.

4. Locked units are designed and staffed to provide the care and services necessary for the resident's needs to be met.

a. The locked unit shall have designated space for dining and/or group and individual activities that is separate and apart from the resident bedrooms and bathrooms;

b. The dining space shall contain tables for eating within the locked unit.

c. The activities area(s) shall contain seating, and be accessible to the residents within the locked unit.

5. There shall be sufficient staff to respond to emergency situations in the locked unit at all times.

6. The resident on the locked unit has the right to exercise those rights which have not been limited as a result of admission to the unit.

7. Care plans shall address the reasons for the resident being in the unit and how the nursing facility is meeting the resident's needs.

8. All staff designated to provide care and services on locked units shall have training regarding unit policies and procedures, admission and discharge criteria, emergency situations and the special needs of the residents on the unit.

9. Admission to a locked unit shall be in compliance with R.S. 40:1299.53 and 40:2010.8.

B. Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

C. Seclusion. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

D. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9911. Hand-Washing Stations, Toilet Rooms and Bathing Facilities

A. A hand-washing station shall be provided in each resident room.

1. Omission of this station shall be permitted in a single-bed or two-bed room when a hand-washing station is located in an adjoining toilet room that serves that room only.

B. Each resident shall have access to a toilet room without having to enter the corridor area. In nursing facilities built prior to August 26, 1958, each floor occupied by residents shall be provided with a toilet room and hand-washing station.

1. One toilet room shall serve no more than two residents in new construction or no more than two resident rooms in renovation projects. In nursing facilities built prior to August 26, 1958, toilets and hand-washing stations shall each be provided at a rate of 1 per 10 beds or fraction thereof.

2. Toilet rooms shall be easily accessible, conveniently located, well lighted and ventilated to the outside atmosphere. Fixtures shall be of substantial construction, in good repair and of such design to enable satisfactory cleaning.

3. Separate male and female toilet rooms for use by staff and guests shall be provided.

4. Each toilet room shall contain a toilet, hand-washing station and mirror.

5. Doors to single-use resident toilet rooms shall swing out of the room.

6. Doors to single-use resident toilet rooms shall be permitted to utilize privacy locks that include provisions for emergency access.

7. In multi-use toilet rooms provisions shall be made for resident privacy.

C. Each floor occupied by residents shall be provided with a bathing facility equipped with a toilet, hand-washing

station, and bathing unit consisting of a bathtub, shower, or whirlpool unit.

Table. Repealed.

1. A minimum of one bathtub, shower, or whirlpool unit shall be provided for every 10 residents, or fraction thereof, not otherwise served by bathing facilities in resident rooms. In nursing facilities built prior to August 26, 1958, showers or tubs shall each be provided at a rate of 1 per 15 beds or fraction thereof.

2. Bathing facilities shall be easily accessible, conveniently located, well lighted and ventilated to the outside atmosphere. Fixtures shall be of substantial construction, in good repair, and of such design to enable satisfactory cleaning.

3. Tub and shower bottoms shall be of nonslip material. Grab bars shall be provided to prevent falling and to assist in maneuvering in and out of the tub or shower.

4. Separate bathing facilities shall be provided for employees who live on the premises.

5. In multi-use bathing facilities provisions shall be made for resident privacy.

6. Wall switches for controlling lighting, ventilation, heating or any other electrical device shall be so located that they cannot be reached from a bathtub, shower, or whirlpool.

D. - H. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9913. Dining and Resident Activities

A. The nursing facility shall provide one or more areas designated for resident dining and activities.

B. Smoking is not permitted in the dining room and other public areas as specified by R.S. 40:1300.256(B)(11).

C. Dining room(s) or dining area(s) shall be sufficient in space and function to accommodate the needs of the residents without restriction. Dining areas shall be adequately furnished, well lighted, and well ventilated. Dining areas shall be sufficient in space to comfortably accommodate the persons who usually occupy that space, including persons who utilize walkers, wheelchairs and other ambulating aids or devices.

D. There shall be at least one well lighted and ventilated living/community room with sufficient furniture.

E. There shall be sufficient space and equipment to comfortably accommodate the residents who participate in group and individual activities. These areas shall be well lighted and ventilated and be adequately furnished to accommodate all activities.

F. Areas used for corridor traffic or for storage of equipment shall not be considered as areas for dining or activities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9915. Linen and Laundry

A. The nursing facility shall have available, at all times, a quantity of bed and bath linen essential for proper care and comfort of residents.

B. - G. ...

H. Clean linen shall be transported and stored in a manner to prevent its contamination.

I. Nursing facilities providing in-house laundry services shall have a laundry system designed to eliminate crossing of soiled and clean linen.

J. Nursing facilities that provide in house laundry services and/or household washers and dryers shall have policies and procedures to ensure safety standards, infection control standards and manufacturer's guidelines are met.

K. There shall be hand washing facilities available for use in any designated laundry area.

L. Provisions shall be made for laundering personal clothing of residents.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9917. Equipment and Supplies

A. The nursing facility shall maintain all essential mechanical, electrical, and resident care equipment in safe operating condition.

B. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9919. Other Environmental Conditions

A. A hard surfaced off-the-road parking area to provide parking for one car per five licensed beds shall be provided. This is a minimum requirement and may be exceeded by local ordinances. Where this requirement would impose an unreasonable hardship, a written request for a lesser amount may be submitted to the department for waiver consideration.

B. The nursing facility shall make arrangements for an adequate supply of safe potable water even when there is a loss of normal water supply. Service from a public water supply must be used, if available. Private water supplies, if used, shall meet the requirements of the LAC Title 51, *Public Health-Sanitary Code*.

C. An adequate supply of hot water shall be provided which shall be adequate for general cleaning, washing and sanitization of cooking and food service dishes and other utensils and for bathing and laundry use. Hot water supply to the hand washing and bathing faucets in the resident areas shall have automatic control to assure a temperature of not less than 100 degrees Fahrenheit, nor more than 120 degrees Fahrenheit, at the faucet outlet. Supply system design shall comply with the *Louisiana state Plumbing Code* and shall be based on accepted engineering procedures using actual number and types of fixtures to be installed.

D. The nursing facility shall be connected to the public sewerage system, if such a system is available. Where a public sewerage is not available, the sewerage disposal system shall conform to the requirements of the LAC Title 51, *Public Health-Sanitary Code*.

E. The nursing facility shall maintain a comfortable sound level conducive to meeting the need of the residents.

F. All plumbing shall be properly maintained and conform to the requirements of the LAC Title 51, *Public Health-Sanitary Code*.

G. All openings to the outside atmosphere shall be effectively screened. Exterior doors equipped with closers in air conditioned buildings need not have screens.

H. Each room used by residents shall be capable of being heated to a minimum of 71 degrees Fahrenheit in the coldest weather and capable of being cooled to a maximum of 81 degrees Fahrenheit in the warmest weather.

I. Lighting levels in all areas shall be adequate to support task performance by staff personnel and independent functioning of residents. A minimum of 6 feet to 10 feet candelas over the entire stairway, corridors, and resident rooms measured at an elevation of 30 inches above the floor and a minimum of 20 feet to 30 feet candelas over areas used for reading or close work shall be available.

J. Corridors used by residents shall be equipped on each side with firmly secured handrails, affixed to the wall. Handrails shall comply with the requirements of the state adopted accessibility guidelines.

K. There shall be an effective pest control program so that the nursing facility is free of pest and rodent infestation.

L. - R. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:64 (January 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#069

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Psychiatric Residential Treatment Facilities
Licensing Standards
(LAC 48:I.9047)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.9047 as authorized by R.S. 40:2179-2179.1. This Emergency Rule is promulgated in accordance with the provisions of the Administrative

Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the licensing standards for psychiatric residential treatment facilities (PRTFs) in order to remove service barriers, clarify appeal opportunities, avoid a reduction in occupancy of PRTFs in rural locations, and clarify the process for cessation of business (*Louisiana Register*, Volume 40, Number 8). The department subsequently amended the provisions of the August 20, 2014 Emergency Rule in order to revise the formatting of these provisions to ensure that these provisions are appropriately promulgated in a clear and concise manner (*Louisiana Register*, Volume 41, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing PRFTs in order to revise the minimum staffing requirements for staff-to-client ratios (*Louisiana Register*, Volume, 42, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2016 Emergency Rule. This action is being taken to avoid imminent peril to the public health, safety and welfare of the Medicaid recipients by ensuring sufficient provider participation and recipient access to medically necessary PRTF services.

Effective September 18, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing the minimum staffing requirements for psychiatric residential treatment facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 90. Psychiatric Residential Treatment Facilities (under 21)

Subchapter D. Human Resources

§9047. Personnel Requirements

A. - A.4. ...

B. The facility shall maintain a minimum ratio of one staff person for four residents (1:4) between the hours of 6 a.m. and 10 p.m. The staff for purposes of this ratio shall consist of direct care staff (i.e. licensed practical nurse (LPN), MHS, MHP, LMHP, etc.).

C. The facility shall maintain a minimum ratio of one staff person for six residents (1:6) between 10 p.m. and 6 a.m. Staff shall always be awake while on duty. The staff for purposes of this ratio shall consist of direct care staff (i.e. LPN, MHS, MHP, LMHP, etc.).

D. Staffing ratios listed above are a minimum standard. The PRTF must have written policies and procedures that:

1. demonstrate how the staffing pattern will be adjusted when necessary to meet the individual needs and acuity of youth as those fluctuate over time;

2. document how the PRTF continuously monitors the appropriateness of its staffing pattern to ensure the safety of both youth and staff;

a. This documentation shall include specific methods used by the PRTF to monitor metrics such as restraints and seclusions and other adverse incidents, and documentation of how the PRTF uses this monitoring to make ongoing decisions about staffing patterns; and

3. document how the PRTF continuously monitors the appropriateness of its staffing pattern to ensure that youth receive appropriate, individualized care and treatment and therapeutic interactions;

a. This documentation shall include specific methods used by the PRTF to monitor metrics such as clinical progress and outcomes, and documentation of how the PRTF uses this monitoring to make ongoing decisions about staffing patterns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:385 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1608#070

DECLARATION OF EMERGENCY

Department of Health Office of Public Health

Added Controlled Dangerous Substances (LAC 46:LIII.2704)

The Department of Health, Office of Public Health (LDH/OPH), pursuant to the rulemaking authority granted to the secretary of LDH by R.S. 40:962(C) and (H), hereby adopts the following Emergency Rule for the protection of public health. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.).

Based on the criteria, factors, and guidance set forth in R.S. 40:962(C) and 40:963, the secretary, under this rulemaking, has determined that the below listed substances have a high potential for abuse and should be scheduled as controlled dangerous substances to avoid an imminent peril to the public health, safety, or welfare. In reaching the decision to designate the below listed substances as controlled dangerous substances under schedule I, the secretary has considered the criteria provided under R.S. 40:963 and the specific factors listed under R.S. 40:962(C). The secretary has determined that schedule I is the most appropriate due to her findings that the substances added herein have a high potential for abuse, the substances have no currently accepted medical use for treatment in the United States, and there is a lack of accepted safety for use of the substances under medical supervision. Effective on July 29, 2016.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 27. Controlled Dangerous Substances

Subchapter A. General Provisions

§2704. Added Controlled Dangerous Substances

A. The following drugs or substances are added to schedule I of the Louisiana uniform controlled dangerous substances law, R.S. 40:961 et seq.:

1. Furanylfentanyl (N-phenyl-N-[1-(2-phenylethyl) piperidin-4-yl]furan-2-carboxamide).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:962, R.S. 40:963, and R.S. 49:953(B).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 42:

Rebekah E. Gee MD, MPH
Secretary

1608#022

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Greater Amberjack Commercial Harvest Season Closure

In accordance with the provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use seasonal rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in LAC 76:VII.335.G.5 to modify opening and closing dates of any commercial or recreational reef fish seasons in Louisiana state waters when he is informed by the regional administrator of NOAA fisheries that the seasons have been closed in adjacent federal waters, the secretary hereby declares:

The commercial fishery for greater amberjack in Louisiana waters will close at 12:01 a.m. on July 17, 2016, and remain closed until 12:01 a.m., January 1, 2017. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell greater amberjack whether within or without Louisiana waters. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing greater amberjack taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by NOAA fisheries that the commercial greater amberjack season in federal waters of the Gulf of Mexico will close at 12:01 a.m. on July 17, 2016 as the commercial quota is projected to be met by that date. The season for commercial harvest in federal waters will remain closed until 12:01 a.m. January 1, 2017.

Compatible season regulations in state waters is preferable to provide effective rules and efficient enforcement for the fishery, and to prevent overfishing of the species in the long-term.

Charlie Melancon
Secretary

1608#004

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Spring Inshore Shrimp Season Closure from Freshwater Bayou Canal to the Louisiana-Texas Line

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on May 5, 2016 which authorized the secretary of the Department of Wildlife and Fisheries to close the 2016 spring inshore shrimp season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop, the secretary hereby declares:

The 2016 spring inshore shrimp season will close on July 15, 2016 at 6 p.m. in state inside waters from the Freshwater Bayou canal westward to the LA/TX state line. The only state inside waters that are currently open are:

- the open waters of Breton and Chandeleur Sounds as described by the double-rig line;
- a portion of Mississippi Sound as described here, beginning at a point on the Louisiana-Mississippi lateral boundary at 30 degrees 09 minutes 39.6 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence due south to a point at 30 degrees 05 minutes 00.0 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence southeasterly to a point on the western shore of Three-Mile Pass at 30 degrees 03 minutes 00.0 seconds north latitude and 89 degrees 22 minutes 23.0 seconds west longitude; thence northeasterly to a point on Isle Au Pitre at 30 degrees 09 minutes 20.5 seconds north latitude and 89 degrees 11 minutes 15.5 seconds west longitude, which is a point on the double-rig line as described in R.S. 56:495.1(A)2; thence northerly along the double-rig line to a point on the Louisiana-Mississippi lateral boundary at 30 degrees 12 minutes 37.9056 seconds north latitude and 89 degrees 10 minutes 57.9725 seconds west longitude; thence westerly along the Louisiana-Mississippi lateral boundary to the point of beginning.

All state outside waters seaward of the inside/outside shrimp line, as described in R.S. 56:495 will remain open to shrimping until further notice.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples within these waters have rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Charlie Melancon
Secretary

1608#005

Rules

RULE

Office of the Governor Board of Pardons Committee on Parole

Parole—Eligibility and Types (LAC 22:XI.303 and 307)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons has amended its rules of LAC 22:XI.303 and 307. These rule changes provide technical adjustments to regular parole and revise procedures and eligibility for medical parole. Section 307 provides that a permanently disabled offender or terminally ill offender may be eligible for medical parole and that offender serving a sentence for conviction of first degree murder or who are sentenced to death are not eligible for medical parole consideration. Section 307 establishes procedures for Probation and Parole to monitor offenders granted medical parole.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Committee on Parole

Chapter 3. Parole—Eligibility and Types

§303. Regular Parole

A. An offender's eligibility is specified by Louisiana law. Parole eligibility is generally based on the nature of the offense, offender class, and length of time served. Not all offenders are eligible for parole consideration. Parole eligibility is determined and calculated by the Department of Public Safety and Corrections.

B. Generally within six months prior to an offender's parole eligibility date, all pertinent information will be compiled concerning the offender's case, including but not limited to:

1. the nature and circumstances of the offense;
2. prison records;
3. the pre-sentence investigation report;
4. any other information (including correspondence),

reports, or data as may be generated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2295 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2269 (August 2013), LR 42:1283 (August 2016).

§307. Medical Parole

A. An offender determined by the Department of Public Safety and Corrections to be permanently disabled offender or terminally ill offender may be eligible for medical parole consideration.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical parole consideration.

2. Offenders who are serving a sentence for conviction of first degree murder, second degree murder, or who are sentenced to death are not eligible for medical parole consideration.

3. Medical parole consideration shall be in addition to any other parole for which an offender may be eligible. An offender eligible for both medical parole and traditional parole under the provisions of R.S. 15:574.4 shall be first considered for traditional parole.

B. *Permanently Disabled Offender*—any offender who is unable to engage in any substantial gainful activity by reason of any medically determinable physical impairment which can be expected to result in death or which is or can be expected to be permanently irreversible.

C. *Terminally Ill Offender*—any offender who, because of an existing medical condition, is irreversibly terminally ill. For the purposes of this Section, “terminally ill” is defined as having a life expectancy of less than one year due to an underlying medical condition.

D. Public hearings for medical parole consideration will be held at a location convenient to the committee and the offender and shall be conducted in accordance with board policies, 05-0511, “Public Hearings/Videoconferencing” and 05-511-A, “Special Needs”. The committee may request that additional medical information be provided or that further medical examinations be conducted.

E. The authority to grant medical parole shall rest solely with the committee.

1. The committee shall determine the risk to public safety and shall granted medical parole only after determining that the offender does not pose a high risk to public safety. In the assessment of risk, emphasis shall be given to the offender's medical condition and how this relates to his overall risk to society.

2. Generally, medical parole consideration shall not be given to an offender when the offender's medical condition was present at the time of sentencing, unless the offender's overall condition has significantly deteriorated since that time.

3. The committee, if it grants medical parole, may establish any additional conditions of medical parole as it may deem necessary to monitor the offender's physical condition and to assure that the offender is not a danger to himself and society.

F. The parole term of an offender released on medical parole shall be for the remainder of the offender's sentence. Supervision of an offender released on medical parole shall consist of periodic medical evaluations at intervals to be determined by the committee at the time of release.

1. An offender released on medical parole may have his parole revoked if his medical condition improves to such a degree that he is no longer eligible for medical parole.

a. If the offender's medical parole is revoked due to an improvement in his condition, and he would be otherwise eligible for parole, he may then be considered for parole under the provisions of R.S. 15:574.4.

2. Medical parole may also be revoked for violation of any condition of parole as established by the committee.

G. The Division of Probation and Parole (P and P) shall monitor offenders that have been granted medical parole until the offender's death or the expiration of their sentence. P and P shall submit a monthly report of all medical paroles to the board chair by the tenth of each month. The report must include the latest narrative report from the offender's P and P office, date and time of death if indicated, and any other information deemed to be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013), LR 41:43 (January 2015), LR 42:1283 (August 2016).

Sheryl M. Ranatza
Board Chair

1608#049

RULE

**Department of Health
Board of Medical Examiners**

**Midwives—Licensure, Certification and Practice
(LAC 46:XLV Chapters 23 and 53)**

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana state Board of Medical Examiners (the "board") by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and the Louisiana Midwife Practitioners Act, R.S. 37:3241 et seq., the board has amended its rules governing licensure, certification and practice of midwives, LAC 46:XLV, Subpart 2, Chapter 23 and Subpart 3, Chapter 53. The amendments are set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 23. Licensed Midwives

Subchapter A. General Provisions

§2303. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

* * *

Application—a request directed to and received by the board, in a manner specified by the board, for a license or permit to practice midwifery in the state of Louisiana, together with all information, certificates, documents, and other materials required by the board to be submitted with such request.

* * *

Certified Professional Midwife or (*CPM*)—an individual certified by the North American Registry of Midwives (NARM).

* * *

Licensed Midwife Practitioner—an individual who has completed all the requirements of R.S. 37:3247, 3253, and 3255, has successfully completed the examination process, is certified as a midwife by the North American Registry of Midwives (NARM), and is licensed by the board.

Louisiana Advisory Committee on Midwifery—
Repealed.

Low Risk Patient—an individual who is at low or normal risk of developing complications during pregnancy and childbirth as evidenced by the absence of any preexisting maternal disease or disease arising during pregnancy or such other conditions as the board may identify in rules.

Midwife—an individual who gives care and advice to a woman during pregnancy, labor, and the postnatal period who is not a physician or a certified nurse midwife.

* * *

Midwife Practitioners Act or the *Act*—R.S. 37:3240-3259, as may from time to time be amended.

Physician—an individual licensed to practice medicine in this state who is actively engaged in a clinical obstetrical practice and has hospital privileges in obstetrics in a hospital accredited by the Joint Commission.

Physician Evaluation and Examination—physician evaluation and examination as provided in R.S. 37:3244 to determine whether, at the time of such evaluation and examination, the individual is at low or normal risk of developing complications during pregnancy and childbirth.

Practice of Midwifery—holding oneself out to the public as being engaged in the business of attending, assisting, or advising a woman during the various phases of the interconceptional and childbearing periods.

Supervision of a Physician—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:513 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1284 (August 2016).

Subchapter B. Qualifications for Licensure

§2305. Scope of Subchapter

A. The rules of this Subchapter govern the licensing of midwives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:513 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1284 (August 2016).

§2307. Qualifications for License

A. To be eligible for licensure as a licensed midwife, an applicant shall:

1. be at least 21 years of age and shall have graduated from high school or possess a graduate education diploma (GED);
2. ...
3. be currently certified in cardiopulmonary resuscitation (CPR) of the adult and newborn;
4. - 5. ...

6. have met, within four years prior to the date of application, the requirements for practical clinical experience prescribed by §2357 of this Chapter; provided, however, that exceptions to the four year limit may be made at the discretion of the board upon a request submitted in writing identifying a medical or other extenuating circumstance deemed acceptable to the board. The length of any such exception may be conditioned upon any terms that the board may deem appropriate.

7. have demonstrated professional competence in the practice of midwifery by passing an examination approved by the board; and

A.8. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:513 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1284 (August 2016).

§2309. Procedural Requirements

A. In addition to the substantive qualifications specified in §2307, to be eligible for a license, an applicant shall satisfy the procedures and requirements for application provided by §§2311 to 2315 of this Chapter and successfully complete the examination identified in §2317 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1285 (August 2016).

Subchapter C. Application

§2313. Application Procedure

A. Application for licensing shall be made in a format prescribed by the board. Applications and instructions may be obtained from the board's web page or by personal or written request to the board.

B. An application for licensing under this Chapter shall include:

1. proof, documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Chapter;

2. a recent photograph of the applicant; and

3. such other information and documentation as the board may require to evidence qualification for licensing.

C. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

D. The board may refuse to consider any application which is not complete in every detail, including submission of every document required by the application form. The board may, in its discretion, require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

E. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3240-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended LR 17:779 (August 1991), LR 30:236 (February 2004), amended by the Department of Health, Board of Medical Examiners, LR 42:1285 (August 2016).

§2315. Effect of Application

A. - B. ...

C. The submission of an application for licensing to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose and release any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations, or governmental entities pursuant to §2315.A or B of this Chapter to any person, firm, corporation, association, or governmental entity having a lawful, legitimate, and reasonable need therefore, including, without limitation, the midwife licensing authority of any state; the Federal Drug Enforcement Agency; the Louisiana Board of Pharmacy, the North American Registry of Midwives, the Louisiana Department of Health; and federal, state, county or parish, and municipal health and law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1285 (August 2016).

Subchapter D. Examination

§2317. Designation of Examination

A. The CPM examination administered by NARM, or such other certifying examination as the board may subsequently approve, shall be accepted by the board as a qualifying examination for purposes of midwifery licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1285 (August 2016).

§2319. Eligibility for Examination

A. To be eligible for examination an applicant shall make application to NARM in accordance with its procedures and requirements including verification of the applicant's clinical experience and skills essential to the practice of midwifery. Information on the examination process, including fee schedules and application deadlines, must be obtained by each applicant from NARM.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1285 (August 2016).

§2321. Dates, Places of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991) repealed, LR 42:1285 (August 2016).

§2323. Administration of Examination

A. The dates and places where the examination for licensure as a midwife are given are scheduled by NARM.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2325. Subversion of Examination Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2327. Finding of Subversion

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2329. Sanctions for Subversion of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2331. Passing Score

A. The board shall use the criteria for satisfactory passage of the examination adopted by NARM.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2333. Restriction, Limitation on Examinations

A. An applicant who fails the examination on two occasions shall not be considered for licensure until the applicant has completed not less than three months of additional educational or clinical instruction, courses, or programs as prescribed and approved by the board and thereafter successfully passed the examination. For failures beyond three attempts such education or instruction may include, without limitation, repeating all or a portion of any didactic and clinical training required for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:515 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2335. Lost, Stolen, or Destroyed Examinations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

Subchapter E. Restricted Licensure, Apprentice Permits

§2339. Apprentice Permits

A. - D. ...

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

Subchapter F. License Issuance, Termination, Renewal, Reinstatement

§2341. Issuance of License

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2343. Expiration of Licenses and Permits

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2345. Renewal of License

A. Every license issued by the board under this Chapter shall be renewed biannually on or before its expiration by renewing on-line or by submitting to the board an application for renewal, together with the renewal fee prescribed in Chapter 1 of these rules.

B. The renewal application and instructions may be obtained from the board's web page or upon personal or written request to the board.

C. Any person who files for renewal of licensure shall present a current certification in cardiopulmonary resuscitation (CPR) of the adult and newborn and document or certify, in a manner prescribed by the board, the completion of 30 contact hours of continuing education as approved by the board, in accordance with §§2361-2364 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3240-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended 17:779 (August 1991), LR 30:236

(February 2004), amended by the Department of Health, Board of Medical Examiners, LR 42:1286 (August 2016).

§2347. License Non-Renewal

A. Any license not renewed on or before its expiration date shall be deemed expired for non-renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1287 (August 2016).

§2349. Reinstatement of License

A. A license which has expired due to non-renewal may be reinstated by submitting an application for reinstatement in a manner prescribed by the board, together with the renewal fee prescribed by Chapter 1 of these rules.

B. Any person who applies for license reinstatement within 30 days of the date of expiration shall be required to pay a late fee of \$50.

C. Any person who has not filed for renewal or applies for reinstatement more than 30 days but less than one year following the date of expiration shall be required to pay a late fee of \$100 or a fee of \$200 if application for reinstatement is made within two years of the date of expiration, provided that the applicant demonstrates satisfaction of the continuing education requirements prescribed by §§2361-2364 of these rules. A midwife whose license has lapsed and expired for a period in excess of two years may apply to the board for an initial original license pursuant to the applicable rules of this Chapter.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1287 (August 2016).

Subchapter G. Education

§2353. Basic Sciences

A. Every applicant seeking licensure must, as a condition of eligibility for licensure, demonstrate cognitive competence in the basic sciences of human anatomy, human physiology, biology, psychology, and nutrition by evidencing successful completion of:

1. ...

2. such other educational instruction, courses, or programs in such subjects as may be approved by the board; or

3. satisfaction of the education requirements requisite to CPM certification by NARM will be deemed to satisfy the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1287 (August 2016).

§2355. Theory of Pregnancy and Childbirth

A. The board shall maintain and periodically revise a list of approved courses, texts, and trainers covering the subject matters which shall comprise a course of study in the theory

of pregnancy and childbirth. The board may use the list as a guideline in determining the acceptability of a non-listed educational source which an applicant submits as complying with any required subject matter. All or part of the course may be obtained through self-study. Satisfaction of the education requirements requisite to CPM certification by NARM will be deemed to satisfy the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1287 (August 2016).

§2357. Clinical Experience

A. Clinical experience in midwifery is required of every applicant for licensure and may be obtained in a variety of settings, including medical offices, clinics, hospitals, maternity centers, and in the home. Clinical experience must include instruction in basic nursing skills, including vital signs, perineal preparation, enema, urethral catheterization, aseptic techniques, administration of medication orally and by injection, local infiltration for anesthesia, administration of intravenous fluids, venipuncture, infant and adult resuscitation, fetal heart tones, edema, routine urinalysis, and curetting and repair of episiotomy.

B. The clinical experience requisite to licensure shall include care of women in the antepartum, intrapartum, and postpartum periods. Clinical practice must include at least the following types of numbers of experiences (with out-of-hospital births making up at least one-half of the clinical experience):

1. 75 prenatal visits on at least 25 different women, including 20 initial examinations;

2. attendance at the labor and delivery of at least 10 live births as an observer and 20 births as an assistant attendant;

3. management of the labor and delivery of newborn and placenta for at least 25 births as the primary birth attendant;

4. ...

5. 40 postpartum evaluations of mother and baby in home or hospital within 72 hours of delivery;

6. a minimum of five repairs of lacerations or such greater number as necessary to be deemed competent by the clinical supervisor, in addition to any practice on non-human subjects;

7. five observations of in-house hospitalized births involving high-risk obstetric care, provided, however, that this requirement may be waived by the board upon demonstration and documentation by the applicant that opportunity for such observations was not reasonably available to the applicant notwithstanding the applicant's diligent, good faith efforts to obtain opportunity for such observations;

8. observation of one complete series of at least 6 prepared childbirth classes offered by an approved provider; and

9. five continuity of care births, all as primary under supervision, which are to include:

a. five prenatal visits spanning at least two trimesters;

- b. the birth (assumed delivery of placenta and immediate postpartum);
- c. one newborn examination; and
- d. two postpartum examinations (after 24 hours).

C. Satisfaction of the clinical experience requirements requisite to CPM certification by NARM will be deemed to satisfy the requirements of §2357.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1287 (August 2016).

§2359. Supervision of Clinical Experience

A. Apprentice midwife practitioners must obtain their clinical experience under the immediate personal supervision of a physician, certified nurse-midwife, or a licensed midwife.

B. Senior apprentice midwives may obtain the clinical experience requisite to licensure under the general direction, rather than direct supervision, of a physician, certified nurse-midwife, or licensed midwife.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

Subchapter H. Continuing Education

§2361. Scope of Subchapter; Continuing Education Requirement

A. The rules of this Subchapter provide standards for the continuing education requisite to renewal of any license or permit issued under this Chapter.

B. To be eligible for renewal of licensure or apprentice permit, a licensed midwife or apprentice midwife shall document, in a manner prescribed by the board, the successful completion of not less than 30 contact hours of continuing education obtained since such license or permit was last issued, reinstated, or renewed. As used in this Subchapter, "contact hour" means 60 minutes of participation in an organized learning experience under responsible sponsorship, capable direction, and qualified instruction, as approved by the board.

C. ...

D. The following programs and activities are illustrative of the types of programs and activities which shall be deemed to be qualifying continuing education activities and programs for purposes of this Subchapter:

1. attendance at or participation in meetings, conferences, workshops, seminars, or courses, such as programs conducted, sponsored, or approved for continuing education credit by the American Medical Association, the American Congress of Obstetricians and Gynecologists, the American Nurse Association, the Association of Certified Nurse Midwives, the Midwives Alliance of North America and the North American Registry of Midwives;

2. - 6. ...

E. - E.3. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

§2362. Documentation Procedure

A. Documentation and/or certification of satisfaction of the continuing professional education requirements prescribed by these rules shall be made in a manner prescribed by the board's renewal application.

B. Certification of continuing education activities that are not presumptively approved under §2361 of these rules shall be referred to the board. If the board determines that an activity certified by an applicant for renewal in satisfaction of continuing education requirements does not qualify for recognition or does not qualify for the number of continuing education contact hours claimed by the applicant, the board shall give notice of such determination to the applicant for renewal and the applicant may file a written appeal with the board within 10 days of such notice. The board's decision with respect to approval and recognition of any such activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

§2364. Waiver of Requirements

A. The board may, in its discretion, waive all or part of the continuing education required by these rules in favor of a licensed midwife or apprentice midwife who makes written request for such waiver to the board and evidences to the satisfaction of the board a permanent physical disability, illness, financial hardship, or other similar extenuating circumstances precluding satisfaction of the continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

§2365. Unlawful Practice

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

§2367. Revocation of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

§2369. Penalties

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1288 (August 2016).

§2371. Hearing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:518 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

§2373. Persons Not Affected

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:518 (August 1986), amended LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

Subpart 3. Practice

Chapter 53. Licensed Midwives

Subchapter A. Standards of Practice

§5301. Scope of Practice

A. Licensed midwife practitioners may provide care only to low risk clients determined by physician evaluation and examination to be normal for pregnancy and childbirth, and at low risk for the development of medical complications. Such care includes prenatal supervision and counseling; preparation for childbirth; and supervision and care during labor and delivery and care of the mother and the newborn in the immediate postpartum period if progress meets criteria generally accepted as normal as defined by the board. Licensed midwives shall refer or consult with a physician when a client's medical condition deviates from normal. Licensed midwives may provide care in hospitals, birth centers, clinics, offices and home birth settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

§5303. Definitions

A. The definitions set forth in Chapter 23 of these rules shall equally apply to this Chapter, unless the context clearly states otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

§5305. Skills

[Formerly §5303]

A. All licensed midwives shall have the skills necessary for safe practice, including the ability to assess, monitor, and manage on an ongoing basis, normal antepartum, intrapartum, and postpartum situations; perform newborn evaluations; identify and assess maternal, fetal, and infant deviations from normal; provide effective lifesaving measures, including CPR; manage emergency situations

appropriately; establish and maintain aseptic techniques and master basic observational skills and those special observational skills required for out-of-hospital deliveries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

§5307. Screening

[Formerly §5309]

A. All midwives will use risk factor assessments of their clients as identified in §5315 in order to establish their initial and continuing eligibility for midwifery services. Clients will be informed of their risk status. All midwives have the right and responsibility to refuse and discontinue services to clients based on these risk factors and to make appropriate referrals when indicated for the protection of the mother and baby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

§5309. Disclosures; Acceptance of Clients

[Formerly §5315]

A. Prior to the acceptance of a client for care, a licensed midwife practitioner shall inform the client orally and in writing of the following disclosures:

1. certain risks and benefits exist for home birth and certain risks and benefits exist for other childbirth alternatives, (including hospital, physician-assisted birth). The midwife is responsible for informing the client of the risks and benefits of all childbirth options to ensure informed consent;

2. regular documented antepartum care by the licensed midwife or another licensed health care provider is required if the midwife is to attend the birth;

3. certain medical conditions and/or client noncompliance with midwife or physician recommendations, as described in §§5315, 5339 and 5353 of this Chapter, may preclude midwife attendance at birth or continued midwife care during any phase of the pregnancy;

4. emergency transport may be required in certain situations; the midwife shall explain what situations warrant emergency transport and the hazards involved;

5. a specific written consent for out-of-hospital birth with the licensed midwife practitioner must be obtained prior to the onset of labor;

6. the client will be provided with a copy of the labor, birth, and newborn record by the midwife;

7. the midwife's agreement can be terminated at any time that the midwife deems it necessary for maintenance of the client's mental and physical safety or for compliance with these rules. When termination occurs, the reasons for termination will be given in writing and an alternative source of care recommended; and

8. the client may terminate the agreement at any time.

B. Prior to accepting care for a client, the midwife shall consult with the physician who performed the physician evaluation and examination to ensure that the client is at low or normal risk for pregnancy.

C. After accepting care, the midwife shall obtain a detailed obstetric and medical history of the client; including the results of all tests conducted during the physician evaluation and examination once available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1289 (August 2016).

§5311. Advance Preparation for Need
[Formerly §5321]

A. The licensed midwife shall, prior to the onset of labor, prepare a written plan or protocol for the transport of mother and infant to a hospital and know the client's contingency arrangements for hospitalization should these needs arise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1290 (August 2016).

§5313. Informed Consent

A. Prior to providing any services, a licensed midwife shall obtain the written informed consent, in writing, of the client, which shall include but not be limited to the following:

1. the name and license number of the licensed midwife;
2. the client's name, address, telephone number, and the name of the client's primary care provider if the client has one;
3. a statement that the licensed midwife is not an advanced practice registered nurse midwife or physician;
4. a description of the education, training, continuing education, and experience of the licensed midwife;
5. a description of the licensed midwife's philosophy of practice;
6. a statement recognizing the obligation of the licensed midwife to provide the client, upon request, separate documents describing the law and regulations governing the practice of midwifery, including the requirement for an evaluation and examination by a physician, the protocol for transfer or mandatory transfer, and the licensed midwife's personal written practice guidelines;
7. a description of the plan or protocol for transfer to a hospital;
8. a complete and accurate description of the services to be provided to the client;
9. whether the licensed midwife maintains a professional liability policy and if insurance is maintained, a description of the liability conditions and limits of such insurance; and

10. any additional information or requirement which the board deems necessary to protect the health, safety, or welfare of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 42:1290 (August 2016).

§5315. Unapproved Practice
[Formerly §5361]

A. The licensed midwife practitioner shall provide care only to clients determined by physician evaluation and examination to be at low or normal risk of developing complications during pregnancy and child birth.

B. The midwife shall not knowingly accept or thereafter maintain responsibility for the prenatal or intrapartum care of a woman who:

1. has had a previous cesarean section or other known uterine surgery such as hysterotomy or myomectomy. This prohibition shall not apply to a midwife's continued perinatal care of a woman who has had no more than one prior cesarean section, provided that arrangements have been made with a physician for a planned hospital delivery at the onset of labor. The midwife shall contact the physician and confirm and document the arrangements for a planned hospital delivery in the client's chart. Within ten days of delivery, a midwife shall report to the board in writing any instance where midwifery services were provided under §5315.B.1 of this Chapter to a client who delivered outside of a planned hospital delivery;
2. has a history of difficult to control hemorrhage with previous deliveries;
3. has a history of thromboembolus, deep vein thromboembolus, or pulmonary embolism;
4. is prescribed medication for diabetes, or has hypertension, Rh disease isoimmunization with positive titer, active tuberculosis, active syphilis, active gonorrhea, HIV positive or is otherwise immunocompromised, epilepsy, hepatitis, heart disease, kidney disease, or blood dyscrasia;
5. contracts primary genital herpes simplex during the pregnancy or manifests active genital herpes during the last four weeks of pregnancy;
6. has a contracted pelvis;
7. has severe psychiatric illness or a history of severe psychiatric illness in the six month period prior to pregnancy;
8. has been prescribed narcotics in excess of three months or is addicted to narcotics or other drugs;
9. ingests more than 2 ounces of alcohol or 24 ounces of beer a day on a regular day or participates in binge drinking;
10. smokes 20 cigarettes or more per day, and is not likely to cease in pregnancy;
11. has a multiple gestation;
12. has a fetus of less than 37 weeks gestation at the onset of labor;
13. has a gestation beyond 42 weeks by dates and examination;
14. has a fetus in any presentation other than vertex at the onset of labor;
15. is a primigravida with an unengaged fetal head in active labor, or any woman who has rupture of membranes with unengaged fetal head, with or without labor;

16. has a fetus with suspected or diagnosed congenital anomalies that may require immediate medical intervention;

17. has preeclampsia;

18. has a parity greater than five with poor obstetrical history; or

19. is younger than 16 or a primipara older than 40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:521 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1290 (August 2016).

§5317. Initial Physician Evaluation and Examination

[Formerly §5311]

A. The licensed midwife practitioner must require that the client have a physician evaluation and examination and be found to be essentially normal or at low risk of developing complications during pregnancy and childbirth before her care can be assumed. The initial physician evaluation and examination shall include the physical assessment procedures which meet current standards of care set forth by the American Congress of Obstetricians and Gynecologists (ACOG).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1291 (August 2016).

§5319. Required Components of Initial Physician

Evaluation and Examination

[Formerly §5313]

A. Laboratory and diagnostic testing and screening obtained in connection with the physician evaluation and examination shall include clinical pelvimetry, and any other laboratory and diagnostic testing and screening which the physician considers appropriate. Due consideration shall be given to the then-current recommendations of ACOG.

B. The midwife shall ensure that all women she plans to deliver have received required testing and screening and shall secure and review a copy of all such results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1291 (August 2016).

§5321. Community Resources

[Formerly §5305]

A. The licensed midwife practitioner must be familiar with community resources for pregnant women such as prenatal classes, the parish health unit and supplemental food programs. The client shall be referred to such resources as appropriate and encouraged to take a prepared childbirth class, preferably one oriented toward home birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR

12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1291 (August 2016).

§5323. Appropriate Equipment

[Formerly §5307]

A. All licensed midwife practitioners shall have available, for their immediate use, appropriate birthing equipment, including equipment to assess maternal, fetal, and newborn well-being, maintain aseptic technique and to perform emergency adult and new born resuscitation, and accomplish all permitted emergency procedures. All equipment used in the practice of midwifery shall be maintained in an aseptic manner, and be in good working order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1291 (August 2016).

§5325. Medications

[Formerly §5333]

A. A licensed midwife may administer the following medications under the conditions indicated:

1. oxygen for fetal or maternal distress and infant resuscitation;

2. local anesthetic, by infiltration, only for the purpose of postpartum repair of tears, lacerations, or episiotomy (no controlled substances);

3. vitamin K, by injection, for control of bleeding in the newborn;

4. oxytocin (pitocin) by injection or methergine orally, only for postpartum control of non-emergent maternal hemorrhage;

5. intravenous fluids for maternal hydration with additional medications as provided by a physician's order or protocol for the purpose of controlling maternal hemorrhage or for prophylactic treatment where the client has tested positive for group B strep;

6. prenatal Rh immunoglobulin (Rhlg) for Rh negative clients and post-partum for Rh positive newborns.

7. benadryl;

8. penicillin-G, unless patient is allergic, then consult with the physician.

B. A licensed midwife may lawfully obtain and have possession of small quantities of the above-named medications and the equipment normally required for administration. Each use of medication shall be recorded by the midwife in the client's chart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1291 (August 2016).

§5327. Initiation of Physical Care

[Formerly §5353]

A. At the visit when physical care of the client is initiated, the licensed midwife practitioner shall review the

results of the physician evaluation and examination to ensure that the client has received a general physical examination which included the taking of a comprehensive medical, obstetrical, and nutritional history sufficient to identify potentially dangerous conditions that might preclude midwife care. The midwife shall make an initial nutritional assessment, counsel the client as to the nutritional needs of mother and fetus during pregnancy and develop a comprehensive plan of care for the client which identifies all problems and need for consultation and establish realistic health care goals.

B. If the client's health status, as determined by medical history, physician evaluation and examination, and the laboratory results is determined not to be low-risk as outlined in §5317 of these rules, the client shall be referred to a physician for management of the client's pregnancy, labor and delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1291 (August 2016).

§5329. Routine Antepartum Care

[Formerly §5355.A]

A. At each prenatal visit, the midwife will check the client's weight, blood pressure, fundal height, urinalysis (protein and glucose), and general health, including checking for pain, bleeding, headaches, edema, dizziness, and other symptoms of preeclampsia. The midwife shall monitor uterine measurements, fetal heart tones, and fetal activity and shall obtain a medical and nutritional history since the last visit. The midwife shall provide or arrange for the administration of prenatal Rh immunoglobulin (Rhlg) for Rh negative clients in compliance with current practice standards and for additional laboratory tests as indicated, including but not limited to serum antibody screening, blood sugar screening, genital cultures, and periodic hematocrit or hemoglobin screening. Additionally, the midwife shall assure that:

1. a quad screen test or maternal serum alpha fetal protein ("MSAFP") shall be offered at the appropriate gestational age between 15-20 weeks gestation;

2. at 28 weeks gestation hematocrit or hemoglobin shall be rechecked and a glucose tolerance test and a repeat antibody screen shall be performed;

3. at 36 weeks gestation a group B beta hemolytic streptococci ("GBBS") culture and repeat hemoglobin or hematocrit shall be performed, along with HIV and RPR testing.

B. The midwife shall ensure that all women she plans to deliver have received the state required tests and have obtained copies of all laboratory results.

C. A midwife may order laboratory testing as required for maternal care and newborn care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and

Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1292 (August 2016).

§5331. Prenatal Visits

[Formerly §5317 and §5323.B]

A. Prenatal visits should be every four weeks until 28 weeks gestation, every two weeks from 28 until 35 weeks gestation, and weekly from 36 weeks until delivery.

B. For home birth, the licensed midwife practitioner will make a home visit three to five weeks prior to the estimated date of confinement (EDC) to assess the physical environment, including the availability of telephone and transportation, and to ascertain whether the client has all the necessary supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:518 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1292 (August 2016).

§5333. Examination and Labor

[Formerly §5329 and §5355.B - C]

A. The licensed midwife practitioner will not perform any vaginal examinations on a woman with ruptured membranes and no labor, other than an initial examination to be certain that there is no prolapsed cord. Once active labor is assured and in progress, exams may be made as necessary.

B. A record of maternal vital signs shall be recorded at the initial evaluation of labor. Maternal vital signs shall be recorded every 3-4 hours unless otherwise indicated by maternal instability or increased maternal risk factors. Maternal stability is defined as a firmly contracted uterus without excessive vaginal bleeding and stable blood pressure. Risk factors are identified in §§5315, 5339 and 5353 of this Chapter.

C. A record of fetal heart rate tones shall be made and recorded at least every 30 minutes in the first stage and every 15 minutes in the second stage of labor. Fetal heart tones shall also be recorded immediately after rupture of membranes.

D. During labor and delivery, the licensed midwife practitioner is responsible for monitoring the condition of mother and fetus; assisting with the delivery; coaching labor; repairing minor tears as necessary, however, any third degree tear or greater should be referred to a physician; examining and assessing the newborn; inspecting the placenta, membranes, and cord vessels; inspecting the cervix and upper vaginal vault, if indicated; and managing any third-stage maternal bleeding.

E. Water Births. A licensed midwife practitioner shall adhere to the then-current recommendations of ACOG for emersion in water during labor and delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519, 520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1292 (August 2016).

§5335. Correction of Presentation

A. The licensed midwife practitioner will not attempt to correct fetal presentations by external or internal version nor will the midwife use any artificial, forcible, or mechanical means to assist the birth, e.g. no forceps or vacuum extractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1293 (August 2016).

§5337. Operative Procedures

[Formerly §5331]

A. The licensed midwife practitioner will not perform, routinely, an operative procedure other than artificial rupture of membranes when the head is well engaged or at zero station, clamping and cutting the umbilical cord, repair of first or second degree perineal lacerations, or repair of episiotomy, if done.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1293 (August 2016).

§5339. Required Physician Consultation, Antepartum and Intrapartum Periods

[Formerly §5363.A - B]

A. The midwife shall obtain medical consultation or refer for medical care any woman who during the antepartum period:

1. develops edema of the face and hands;
2. develops severe, persistent headaches, epigastric pain, or visual disturbances;
3. develops a blood pressure of 140/90 or greater;
4. does not gain 14 pounds by 30 weeks gestation or at least 4 pounds a month in the last trimester or gains more than 6 pounds in two weeks in any trimester;
5. develops greater than trace glucosuria or greater than trace proteinuria on two consecutive separate visits;
6. has abnormal vaginal discharge with no signs of improvement with medication;
7. has symptoms of urinary tract infection;
8. has vaginal bleeding before onset of labor;
9. has rupture of membranes prior to 37 weeks gestation;
10. has marked decrease in or cessation of fetal movement;
11. has inappropriate gestational size;
12. has demonstrated anemia by blood test (hematocrit less than 30 percent);
13. has a fever of equal or greater than 100.4°F or 38°C for 24 hours;
14. has polyhydramnios or oligohydramnios;
15. has excessive vomiting or continued vomiting after 24 weeks gestation;
16. has severe, protruding varicose veins of extremities or vulva;

17. has known structural abnormalities of the reproductive tract;

18. has a history of stillbirth from any cause;

19. has an abnormal Pap smear;

20. reaches a gestation of 41 weeks, 3 days by dates and examination.

B. The midwife shall obtain medical consultation or refer for medical care any woman who during the intrapartum period:

1. develops a blood pressure of 140/90 or greater;
2. develops severe headache, epigastric pain, or visual disturbance;
3. develops proteinuria;
4. develops a fever over 100.4°F or 38°C;
5. develops respiratory distress;
6. has persistent or recurrent fetal heart tones below 100 or above 160 beats per minute between or during contractions, or a fetal heart rate that is irregular;
7. has ruptured membranes without onset of labor after 12 hours;
8. has bleeding prior to delivery (other than bloody show);
9. has meconium or blood stained amniotic fluid with abnormal fetal heart tones;
10. has an abnormal presentation other than vertex;
11. does not progress in effacement, dilation, or station in accordance with practice standards;
12. does not show continued progress to deliver in second stage labor in accordance with practice standards;
13. does not deliver the placenta within one hour if there is no bleeding and the fundus is firm;
14. has a partially separated placenta during the third stage of labor with bleeding;
15. has a blood pressure below 100 systolic if the pulse rate exceeds 100 beats per minute or who is weak and dizzy;
16. bleeds more than 500 cc with or after the delivery of the placenta;
17. has retained placental fragment or membranes; or
18. desires medical consultation or transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:521 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1293 (August 2016).

§5341. Emergency Measures

[Formerly §5337]

A. The following measures are permissible in an emergency situation:

1. cardiopulmonary-resuscitation;
2. episiotomy;
3. intramuscular or intravenous administration of pitocin or intramuscular administration of methergine for the control of postpartum hemorrhage;
4. intravenous (IV) fluids and medications

B. When any of the above measures is utilized, it will be charted on the birth record with detail describing the emergency situation, the measure taken, and the outcome.

C. When an emergency measure is taken the physician (or hospital) with whom the client has made contingency

arrangements for care and delivery shall be contacted by the midwife immediately upon control of the emergency situation, and the midwife shall then transfer care of the client to such physician (or hospital) as he may direct or request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1293 (August 2016).

§5343. Transfer of Care

[Formerly §5323.A]

A. The licensed midwife practitioner shall accompany to the hospital any mother or infant requiring hospitalization, giving any pertinent written records and verbal report to the physician assuming care. If possible, she should remain with the mother and/or infant to ascertain outcome. In those instances where it is necessary to continue providing necessary care to the party remaining in the home, the midwife may turn over the care of the transport of mother or child to qualified emergency or hospital personnel. All necessary written records shall be forwarded with such personnel and a verbal report must be given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), repromulgated by the Department of Health, Board of Medical Examiners, LR 42:1294 (August 2016).

§5345. Postpartum Care

[Formerly §5327 and §5357]

A. The licensed midwife practitioner shall remain with the mother and infant for at least two hours postpartum, or until the mother's condition is stable and the infant's condition is stable, whichever is longer. Maternal stability is evidenced by normal blood pressure, normal pulse, normal respirations, firm fundus, and normal lochia. Infant stability is evidenced by established respirations, normal temperature, strong sucking and normal heart rate.

B. Immediately following delivery of the placenta, the midwife must determine that the uterus is firmly contracted without excessive bleeding. The uterus should be massaged firmly to stimulate contraction if relaxation is noted.

C. In case of an unsensitized Rh negative mother, the midwife shall obtain a sample of cord blood from the placenta and arrange for testing within 24 hours of the birth and ensure referral to a physician so that the mother receives Rh immunoglobulin (Rhlg) as indicated within 72 hours of delivery.

D. The midwife shall provide the client with information concerning routine postpartum care of the mother and infant, including information on breast-feeding, care of the infant's umbilical cord, and perinatal care.

E. The midwife shall recommend that the parents immediately contact the pediatrician or primary care physician who will be assuming care for the infant to arrange for a neonatal examination within 72 hours or sooner if it becomes apparent that the newborn requires medical attention for problems associated with, but not limited, to

congenital or other anomalies. The midwife shall provide the doctor with her written summary of labor, delivery, and assessment of the newborn and shall be available to consult with the doctor concerning the infant's condition.

F. The midwife shall make a postpartum visit within 36 hours of birth, with further visits as necessary. The purpose of these contacts is to ascertain that the infant is alert, has good color, is breathing well, and is establishing a healthy pattern of waking, feeding, and sleeping and that the mother is not bleeding excessively, has a firm fundus, does not have a fever or other signs of infection, is voiding properly, and is establishing successful breastfeeding. In the event that any complications arise, the midwife shall consult with a physician or other appropriate health care provider or shall ensure that the client contacts her own physician.

G. The midwife may conduct a postpartum office visit not later than six weeks postpartum, to include a recommendation for rubella vaccine if indicated, counseling concerning contraception and answering any other questions that have arisen. Alternatively, the client may be referred back to her primary care physician or other health care provider for this care.

H. The midwife shall encourage the mother to have a postpartum evaluation conducted by a physician within two to six weeks after delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519, 520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1294 (August 2016).

§5345. Postpartum Visits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), repealed by the Department of Health, Board of Medical Examiners, LR 42:1294 (August 2016).

§5347. Required Newborn Care

[Formerly §5359]

A. The licensed midwife practitioner shall be responsible for care immediately following the delivery only. Subsequent infant care should be managed by a pediatrician or primary care physician. This does not preclude the midwife from providing counseling regarding routine newborn care and breastfeeding and arranging for the neonatal tests required by state law. If any abnormality is suspected, the newborn must be sent for medical evaluation as soon as possible.

B. Immediately following delivery the midwife shall:

1. wipe face, then suction (with bulb syringe) mouth and nose if necessary;
2. prevent heat loss by the neonate;
3. determine Apgar scores at one and five minutes after delivery;
4. observe and record: skin color and tone, heart rate and rhythm, respiration rate and character, estimated gestational age (premature, term, or post-mature), weight, length, and head circumference.

C. The midwife shall insure that Vitamin K is available at the time of delivery and take appropriate measures designed to prevent neonatal hemorrhage.

D. The midwife is responsible for obtaining a PKU test and all other neonatal tests required by state law, including all required metabolic newborn screens, between 24 hours and no later than 14 days after birth. If the parents object to such tests being performed on the infant, the midwife shall document this objection and notify and refer the newborn to the infant's pediatrician or primary care physician and notify appropriate authorities.

E. The midwife shall leave clear instructions for follow-up care including signs and symptoms of conditions that require medical evaluation, especially fever, irritability, generalized rash and lethargy.

F. The midwife is responsible for performing a glucose check for a newborn if weight is greater than 9 pounds, 4 ounces.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1294 (August 2016).

§5349. Prevention of Infant Blindness

[Formerly §5339]

A. Within one hour of birth, the licensed midwife practitioner shall administer two drops of 1.0 percent solution of silver nitrate or other agent of equal effectiveness and harmlessness into the eyes of the infant in accordance with applicable state laws and regulations governing the prevention of infant blindness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1295 (August 2016).

§5351. Physician Evaluation of Newborn

[Formerly §5343]

A. The licensed midwife practitioner shall recommend that any infant delivered by the midwife be evaluated by a pediatrician or primary care physician within three days of age or sooner if it becomes apparent that the newborn needs medical attention for problems associated with, but not limited to, congenital or other anomalies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1295 (August 2016).

§5353. Required Physician Consultation, Postpartum Period

[Formerly §5363.C-D]

A. The midwife shall obtain medical consultation or refer for medical care any woman who, during the postpartum period:

1. has a third or fourth degree laceration;
2. has uterine atony;
3. bleeds in an amount greater than normal lochial flow;
4. does not void within 2 hours of birth;
5. develops a fever greater than 100.4°F or 38°C on any two of the first 10 days postpartum excluding the first 24 hours;
6. develops foul smelling lochia;
7. develops blood pressure below 100/50 if pulse exceeds 100, pallor, cold clammy skin, and/or weak pulse.

B. The midwife shall obtain medical consultation or refer for medical care any infant who:

1. has an Apgar score of 7 or less at 5 minutes;
2. has any obvious anomaly;
3. develops grunting respirations, retractions, or cyanosis;
4. has cardiac irregularities;
5. has a pale, cyanotic, or grey color;
6. develops jaundice within 48 hours of birth;
7. has an abnormal cry;
8. weighs less than 5 pounds or weighs more than 10 pounds;
9. shows signs of prematurity, dysmaturity, or postmaturity;
10. has meconium staining of the placenta, cord, and/or infant with signs or symptoms of aspiration pneumonia;
11. does not urinate or pass meconium in the first 24 hours after birth;
12. is lethargic or does not feed well;
13. has edema;
14. appears weak or flaccid, has abnormal feces, or appears not to be normal in any other respect;
15. has persistent temperature below 97°F;
16. has jitteriness not resolved after feeding; or
17. has a blood glucose level of less than 30mg/dL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:521 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1295 (August 2016).

§5355. Record Keeping

[Formerly §5347]

A. All midwives shall keep accurate and complete records of all care provided and data gathered for each client.

B. The midwife shall maintain an individual client chart for each woman under her care. The chart shall include results of laboratory tests, observations from each prenatal visit, records of consultations with physicians or other health care providers, and a postpartum report concerning labor, delivery, and condition of the newborn child. The chart shall be made available to the client upon request, and with the client's consent, to any physician or health care provider who is called in as a consultant or to assist in the client's care. This chart shall be kept on standard obstetric forms, or other forms approved by the board. Inactive records shall be maintained no less than 6 years. All records are subject to review by the board.

C. Evidence of the required physician evaluation and examination shall be maintained in the client's records.

D. The attending midwife shall prepare a summary of labor, delivery, and assessment of the newborn, using the Hollister form, or an alternate form containing substantially similar information. One copy of each summary shall be retained with the client's chart and one copy transmitted to the pediatrician or primary care physician.

E. Copies of the disclosure and consent forms required by this Chapter shall be maintained in the client's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1295 (August 2016).

§5357. Birth Registration **[Formerly §5341]**

A. All licensed midwife practitioners shall request copies of printed instructions relating to completion of birth certificates from the Louisiana State Registrar of Vital Records. The licensed midwife practitioner must complete a birth certificate in accordance with these instructions and file it with the registrar within five days of the birth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), repromulgated by the Department of Health, Board of Medical Examiners, LR 42:1296 (August 2016).

§5359. Notification of Maternal or Fetal Demise **[Formerly §5347.G]**

A. A licensed midwife shall immediately report to the parish coroner any maternal mortality or morbidity or the demise of a fetus in excess of 350 grams or as applicable with state law, in clients for whom care has been given.

B. A licensed midwife shall report within 48 hours to the board any maternal, fetal, or neonatal mortality or morbidity in clients for who care has been given. The report shall include the sex, weight, date and place of delivery, method of delivery, congenital anomalies of the fetus, and if maternal, fetal, or neonatal death occurred, cause of death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:519 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1296 (August 2016).

§5361. Annual Reporting

A. Every licensed midwife shall report to the board annually in a manner and form prescribed by the board. The report shall be submitted by January thirty-first of each year and shall include all of the following:

1. the licensed midwife's name and license number;
2. the calendar year being reported;
3. the total number of clients served;

4. the total number and parish of live births attended as a primary caregiver;

5. the total number and parish of stillbirths attended as a primary caregiver;

6. the number of patients whose primary care was transferred to another health care provider during the antepartum period and the reason for each transfer;

7. the number, reason, and outcome for each elective hospital transfer;

8. the number, reason, and outcome for each emergency transport of an expectant mother prior to labor;

9. a brief description of any complications resulting in the mortality of a mother or an infant;

10. any other information prescribed by the board through rule or regulation.

B. Any licensed midwife who fails to timely comply with the reporting requirements of this Section shall be subject to a fine, as provided in §5373 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 42:1296 (August 2016).

§5363. Statistics

[Formerly §5349]

A. The board shall review all reports from licensed midwife practitioners, complete annual midwifery statistics, and make them available to all interested groups or persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:520 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:779 (August 1991), repromulgated by the Department of Health, Board of Medical Examiners, LR 42:1296 (August 2016).

§5365. Unlawful Practice

[Formerly §2365]

A. No individual shall engage or attempt to engage in the practice of midwifery in this state, unless he or she holds a current license or a permit to practice as a licensed midwife or apprentice midwife issued by the board under Chapter 23 of these rules.

B. No person shall use in connection with his or her name or place of business the words "licensed midwife," "licensed midwife practitioner," the initials "LM," "LMP" or any other words, letters, or insignia indicating or implying that he or she is a licensed midwife practitioner or represent himself or herself as such in any way orally, in writing, in print, or by sign directly or by implication unless he or she has been licensed as such under the provisions of these regulations.

C. A licensed midwife who is currently certified by and in good standing with NARM may identify such credentials with the licensee's name or title "Licensed Midwife-Certified" or "Licensed Certified Professional Midwife" or the letters "LM-C" or "LCPM," respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1296 (August 2016).

§5367. Persons Not Affected

[Formerly §2373]

A. Any person authorized by the Louisiana State Board of Nursing to practice as a certified nurse-midwife in the state shall not be affected by the provisions of these regulations.

B. Any student pursuing a course of study in an accredited midwifery education program that is approved by NARM or by the board who provides midwifery services, provided that such services are an integral part of the student's course of study and are performed under the direct supervision of a physician, certified nurse midwife, or a licensed midwife, and the student is designated by a title which clearly indicates the status as a student or trainee, shall not be affected by the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:518 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1297 (August 2016).

Subchapter C. Grounds for Administrative Action

§5369. Causes for Administrative Action

[Formerly §2367]

A. The board may refuse to issue, suspend for a definite period, revoke or impose probationary terms, conditions and restrictions on a license or permit for any of the following causes:

1. dereliction of any duty imposed by law;
2. incompetence as determined by standards of care for obstetrical providers;
3. conviction of a felony;
4. inability to practice with reasonable skill or safety to clients because of mental illness or deficiency; physical illness, including but not limited to deterioration through the aging process or loss of motor skills; and/or, excessive use or abuse of drugs, including alcohol;
5. practicing under a false name or alias;
6. violation of any of the standards of practice set forth herein;
7. obtaining any fee by fraud or misrepresentation;
8. knowingly employing, supervising, or permitting, directly or indirectly, any person or persons not an apprentice or licensed midwife to perform any work covered by these regulations;
9. using or causing or promoting the use of any advertising matter, promotional literature, testimonial, or any other representation, however disseminated or published, which is misleading or untruthful;
10. representing that the service or advice of a person licensed to practice medicine will be used or made available when that is not true or using the words "doctor," or similar words, abbreviations, or symbols so as to connote the medical profession, when such is not the case;
11. permitting another to use the license;
12. delinquency in submission of application and supporting documents for license renewal of 30 days or more;
13. obtaining licensure by means of fraud, misrepresentation, or concealment of material facts;
14. fraud or deceit in connection with services rendered;

15. violating any lawful order, rule, or regulation rendered or adopted by the board; or

16. unprofessional conduct, which has endangered or is likely to endanger the health, welfare or safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1297 (August 2016).

§5371. Hearing

[Formerly §2371]

A. Any person who is disciplined or denied a license or permit or has a license or permit suspended or revoked or is otherwise penalized under these regulations will be notified in writing and afforded the opportunity of a hearing conducted pursuant to the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:518 (August 1986), amended LR 17:779 (August 1991), repromulgated by the Department of Health, Board of Medical Examiners, LR 42:1297 (August 2016).

§5373. Penalties

[Formerly §2369]

A. If a person licensed to practice midwifery under the provisions of these regulations is found guilty of violating any provisions of the Act or these regulations, the board may fine the midwife a sum of not more than \$1,000 and may suspend or revoke the license of the licensed midwife practitioner.

B. The board may cause an injunction to be issued in any court of competent jurisdiction enjoining any person from violating the provisions of the Act or of these regulations. In a suit for injunction, the court may issue a fine of not less than \$100 against any person found in violation of the provisions of these regulations plus court costs and attorney's fees.

C. A licensed midwife who fails to timely file the annual report required by §5361 of this Chapter shall be subject to a fine not to exceed \$100 each day the report is filed late. In no case shall the fine exceed \$500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:517 (August 1986), amended LR 17:779 (August 1991), amended by the Department of Health, Board of Medical Examiners, LR 42:1297 (August 2016).

Subchapter D. Professional Liability

§5375. Professional Liability

A. Physician evaluation and examination as provided in R.S. 37:3244 shall be deemed to constitute a risk assessment. A physician performing a risk assessment is responsible only for determining that at the time of the risk assessment the individual is at low or normal risk of developing complications during pregnancy and childbirth. For any physician performing a physician risk assessment, the physician-patient relationship shall only exist for the purposes of the risk assessment and shall not continue after the conclusion of the physician risk assessment.

B. Physician risk assessment as defined in this Section shall not create either of the following:

1. any legal duty, responsibility, or obligation by the physician to provide continuing care after the conclusion of the physician risk assessment; or

2. a legal relationship between the physician and the licensed midwife or any duty, responsibility, or obligation by the physician to supervise, collaborate, back-up, or oversee the licensed midwife's care of the patient.

C. No physician or other health care provider as defined in R.S. 40:1299.41, no hospital as defined in R.S. 40:2102, or no institution, facility, or clinic licensed by the department shall be:

1. deemed to have established a legal relationship with a licensed midwife solely by providing a risk assessment as defined in this Section or accepting a transfer of a patient from a licensed midwife; or

2. liable for civil damages arising out of the negligent, grossly negligent, or wanton or willful acts or omissions of the licensed midwife solely for providing a risk assessment as defined in this Section or accepting a transfer of a patient from a licensed midwife.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:3241-3259.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 42:1297 (August 2016).

Eric D. Torres
Executive Director

1608#059

RULE

Department of Health Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Mental Health Emergency Room Extensions
(LAC 50:V.2711)

The Department of Health, Bureau of Health Services Financing has repealed LAC 50:V.2711 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2711. Mental Health Emergency Room Extensions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1628 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1781 (August 2010), repealed by the Department

of Health, Bureau of Health Services Financing, LR 42:1298 (August 2016).

Rebekah E. Gee MD, MPH
Secretary

1608#076

RULE

Department of Health Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
School-Based Nursing Services
(LAC 50:XV.9501)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XV.9501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 95. School-Based Nursing Services

§9501. General Provisions

A. - B. ...

C. School-based nursing services shall be covered for all recipients in the school system.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1298 (August 2016).

Rebekah E. Gee MD, MPH
Secretary

1608#077

RULE

Department of Health Bureau of Health Services Financing

Facility Need Review
Major Alterations
(LAC 48:I.12537)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 48:I.12537 in the Medical Assistance Program as authorized by R.S. 36:254. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 5. Health Planning

Chapter 125. Facility Need Review
Subchapter F. Exception Criteria for Bed Approvals
§12537. Temporary Inactivation Due to Major Alterations

A. A licensed nursing facility, ICF/ID or level IV ARCP which is undergoing major alterations to its physical plant may request a temporary inactivation of a certain number of the facility's facility need review (FNR) bed approvals provided that:

1. the nursing facility, ICF/ID or level IV ARCP submits a written request to the licensing agency of the department seeking temporary inactivation of a certain number of its FNR bed approvals. Such written request shall include the following:

a. a statement that the nursing facility, ICF/ID or level IV ARCP is undergoing major alterations to ensure or enhance the health, safety and welfare of the residents;

b. a statement that the major alterations to the nursing facility, ICF/ID or level IV ARCP will cause a certain number of beds to be de-licensed and decertified;

c. an attestation that the alterations are the sole causal factor in the request for temporary inactivation of the FNR bed approvals;

d. the anticipated start date of the temporary inactivation of the FNR bed approvals;

e. the anticipated end date of the temporary inactivation of the FNR bed approvals; and

f. the number of FNR bed approvals requested to be inactivated temporarily;

2. upon receiving a completed written request by a facility for temporary inactivation of a certain number of FNR bed approvals, the department shall review the request to determine whether the request satisfies the requirements of this Section. If the requirements of this Section are met, the department shall issue a notice of temporary inactivation of a certain number of the facility's FNR bed approvals;

3. upon completion of the major alterations, the facility shall submit to the department a completed written request to reinstate the FNR bed approvals that were inactivated due to the major alterations to the facility;

NOTE: The FNR bed approvals capacity, after major alterations are completed, shall not exceed the FNR bed approvals capacity of the nursing facility, ICF/ID or Level IV ARCP at the time of the request to temporarily inactivate a certain number of its FNR bed approvals prior to the major alterations.

4. the provisions of this Subsection shall not apply to a nursing facility, ICF/ID or Level IV ARCP which has voluntarily surrendered its license or has voluntarily disenrolled the facility's beds from Medicaid;

5. there shall be no effect upon the Medicaid reimbursement rate of a nursing facility or an ICF/ID that is undergoing major alterations pursuant to this rule during the period of the inactivation of the FNR approval.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1299 (August 2016).

Rebekah E. Gee MD, MPH
Secretary

1608#078

RULE

Department of Health
Physical Therapy Board

License Application Requirements; Renewal of License;
Reinstatement of Lapsed License; Course Review
Requirements; Content Criteria; and Fees
(LAC 46:LIV.151, 181, 187, 193, 195 and 501)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2405, that the Louisiana Physical Therapy Board has amended Professional and Occupational Standards: Physical Therapy Board, LAC 46:LIV.151, 181, 187, 193 and 195 and 501.

The amendments to LAC 46:LIV.151, 181 and 187 are strictly a clean-up effort to remove references to specific fees and add a cross-reference to §501, where all fees have been moved. The amendments to LAC 46:LIV.193, 195 and 501 apply to course sponsors seeking course approval by the Louisiana Physical Therapy Board, as well as all Louisiana physical therapy and physical therapy assistant licensees. LAC 46:LIV.193 amends course review requirements to allow course sponsors to submit courses for review in advance of presentation, as well as following presentations. The amendment also allows for automatic approval of courses provided by certain sponsors, and provides for more time for individual licensees to submit coursework for individual approval. Amendment to LAC 46:LIV.195 provides better clarification for content of coursework that is approved and broadens the scope of university coursework that can be used for credit toward continuing education requirements of renewal. Authorized by R.S. 37:2424, the amendments to LAC 46:LIV.501 add fees related to continuing education approval, which were previously found in §§193 and 195, and also amends the amount of the license application fee and license renewal fee.

This amendment was proposed in response to the decision made by the majority of members at the board meetings held February 18 and March 16, 2016. The basis and rationale for the proposed Rule are to comply with R.S. 37:2405.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIV. Physical Therapy Board
Subpart 1. Licensing and Certification

**Chapter 1. Physical Therapists and Physical
Therapist Assistants**

Subchapter F. License Application

§151. Requirements
[Formerly §125]

A. - B.4. ...

5. the application fees due from an applicant shall follow the fee schedule described in §501.

C. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2413 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 26:1444 (July 2000), amended by the Physical Therapy Board, LR 37:3040 (October 2011), LR 42:1299 (August 2016).

Subchapter I. License Issuance, Termination, Renewal, Reinstatement

§181. Renewal of License [Formerly §165]

A. ...

B. Renewal applications received by March 31 shall be assessed a renewal fee pursuant to §501. Renewal applications received after March 31 and before April 30 shall be assessed a late renewal fee, pursuant to §501, as provided by law. Renewal applications received after April 30 shall be deemed as applications for license reinstatement pursuant to §185.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), amended by the Physical Therapy Board, LR 37:3044 (October 2011), LR 42:1300 (August 2016).

§187. Reinstatement of Lapsed License [Formerly §167]

A. - B.1. ...

2. the late renewal fee, pursuant to §501;
3. the reinstatement fee, pursuant to §501; and
4. an explanation for the failure to timely renew his license.

C. - E.1. ...

2. the renewal fee, pursuant to §501;
3. the reinstatement fee, pursuant to §501;

E.4. - G.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 28:1979 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3045 (October 2011), LR 42:1300 (August 2016).

Subchapter J. Continuing Education

§193. Course Review Requirements [Formerly §169]

A. Courses and activities approved by the board will be posted on the board website and will indicate the hours of credit which may be earned and the classification of the course.

B. ...

C. Proposed continuing education courses or activities shall be submitted to the board for approval on a form

provided on the board website. Generally, courses or activities of longer duration will require more time for review than courses of short duration.

D. Courses and activities sponsored by the APTA, Louisiana Physical Therapy Association, and by any Louisiana CAPTE accredited program that meet the content criteria described in §195 are automatically approved by the board for continuing education credits toward the biennial requirements for licensees described in §194.

E. Review charge for APTA, LPTA, and Louisiana CAPTE accredited program sponsors will be waived. A fee schedule for all other course review is described in §501.

F. Courses or activities not approved by the board may generate acceptable continuing education credits for licensees under these circumstances:

1. the licensee submits an application for approval of the course or activity using the form provided on the board website;

2. the course or activity submitted for approval shall only be considered for the licensee who submits for approval;

3. in no case will such application for course or activity approval be considered during the last 60 days of the requestor's license term.

G. Course or activity sponsors may be required to submit to the board verified records of attendance and completion of a sponsored course or activity. No licensee shall receive credit for time not actually spent attending the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:20-8 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3046 (October 2011), LR 42:1300 (August 2016).

§195. Content Criteria [Formerly §169]

A. Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management. It should contain evidence-based information related to the practice of physical therapy and clinical outcomes. Course or activity content shall address physical therapy competence and practice and shall be designed to meet one of the following goals.

1. - 3. ...

4. facilitate personal contribution to the advancement of the profession.

B. - B.3.c. ...

d. coursework in a postgraduate physical therapy curriculum, transitional DPT program, or an accredited college or university that meets content criteria may be accepted. Courses will be credited for each satisfactorily completed hour resulting in a grade of B or higher. One semester hour shall be equal to 10 contact hours.

3.d.i. - 4.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208

(February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011), LR 42:1300 (August 2016).

Subpart 3. Fees

Chapter 5. Fees

§501. Fees

A. ...

1. application—\$250;
2. ...
3. renewal of license, per year—\$140;
4. - 6. ...
7. CE review (courses <8 hrs)—\$100;
8. CE review (courses 8+ hrs)—\$150;
9. late renewal of license—\$400;
10. licensee course review—\$20.

B. - C. ...

D. The board may assess reasonable fees with regards to administrative business expenses and services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 17:667 (July 1991), LR 18:963 (September 1992), LR 21:396 (April 1995), LR 28:1982 (September 2002), amended by the Physical Therapy Board, LR 37:3063 (October 2011), LR 42:1301 (August 2016).

Charlotte Martin
Executive Director

1608#001

RULE

Department of Public Safety and Corrections Board of Private Investigator Examiners

Continuing Education (LAC 46:LVII.518 and 519)

The Board of Private Investigator Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and relative to the authority granted to it to adopt, amend or repeal rules provided by R.S. 37:3505, and to prescribe and adopt regulations governing the manner and conditions under which credit shall be given by the board for participation in professional education, has amended Chapter 5 of LAC 46:LVII.

The Board of Private Investigator Examiners has amended LAC 46:LVII.518, Continuing Education, and LAC 46:LVII.519, Continuing Education Credits, to provide that the board will make available to licensees a mandatory continuing education course, which will be offered by the board free of charge. The purpose of the amendment is to regulate the continuing education received by the licensees, to ensure that licensees have formal opportunities to upgrade and update professional knowledge and skills, and for licensees to have an opportunity to learn of changes in the law that may affect them or the practice act for private investigators in Louisiana.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LVII. Private Investigator Examiners

Chapter 5. Application, Licensing, Training, Registration and Fees

§518. Continuing Education

A. Each licensed private investigator shall be required to complete and pass an on-line investigative educational instruction course designed and approved by the LSBPIE every two years in order to qualify for a license renewal. The approved on-line investigative educational instruction course will be available free of charge at the LSBPIE website.

1. A licensed private investigator that completed and passed the approved on-line investigative educational instruction course in connection with a license renewal in the year 2016 shall complete and pass the approved on-line investigative educational instruction course prior to the license renewal date in the year 2018. Thereafter, the approved on-line investigative educational instruction course must be completed and passed biennially prior to the license renewal date in even numbered years.

2. A licensed private investigator that is in good standing but that did not complete and pass the approved on-line investigative educational instruction course in connection with a license renewal in the year 2016 (because the license is not subject to renewal until 2017) shall complete and pass the approved on-line investigative educational instruction course prior to the license renewal date in the year 2017. Thereafter, the approved on-line investigative educational instruction course must be completed and passed biennially prior to the license renewal date in odd numbered years.

3. A newly licensed private investigator that successfully completed a 40-hour training class shall complete and pass the approved on-line investigative educational instruction course prior to the licensee's second license renewal date. Thereafter, the approved on-line investigative educational instruction course must be completed and passed biennially prior to the license renewal date.

B. Each licensed private investigator is required to complete and return the LSBPIE continuing education course form that can be printed after the completion and passing of the approved on-line investigative educational instruction course with the request for license renewal each year. The test can be taken as many times as needed for a passing grade of 75 percent.

C. Any licensee who wishes to apply for an extension of time to complete the approved on-line investigative educational instruction course must submit a signed written request setting forth the reasons for the extension request to the executive director of the LSBPIE 30 days prior to the license renewal date. The training committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days, or additional time as the training committee determines is needed, to complete and pass the approved on-line investigative educational instruction.

D. The LSBPIE may suspend or waive the approved on-line investigative educational instruction course requirement for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:564 (April 2001), LR 27:1016 (July 2001), LR 28:855 (April 2002), LR 38:1596 (July 2012), LR 42:1301 (August 2016).

§519. Continuing Education Credits

A. The standards set forth in §518 will govern continuing education for private investigators in Louisiana.

B. Nothing in this Section will prohibit a licensed private investigator from attending or taking a continuing education course provided by another party. The private investigator may forward that compliance form to the LSBPIE office and it will be placed in the private investigators file. However, the course(s) will not be a substitute for the required and approved on-line investigative educational instruction course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 38:2378 (September 2012), amended LR 42:1302 (August 2016).

Pat Englade
Executive Director

1608#057

RULE

**Department of Public Safety and Corrections
Office of State Police**

Escorts by DPS Police (LAC 73:I.1901)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and

R.S. 32:3 et seq., has amended LAC 73:I.1901 regulating escorts of oversize permit loads by allowing Department of Public Safety officers to provide proper escort of such loads when a State Police Trooper is not available. Currently, the Office of State Police is assigning on-duty troopers to escort permit loads when there is an increase in demand. These assignments decrease the number of troopers available for calls and increases response times.

Title 73

WEIGHTS, MEASURES AND STANDARDS

Part I. Weights and Standards

Chapter 19. Escort Requirements for Oversize and/or Overweight Vehicles or Loads

§1901. Provision Enforcement

A. - B.15. ...

16. No current full-time employee of the Department of Transportation and Development shall be used for or engage in self or private escort service. Under the existing policy of the Department of Public Safety, Office of State Police, an off-duty trooper or DPS police officer working in uniform may serve as escort for movements of oversize and/or overweight loads.

17. In the event a state police escort is required, the permittee shall pay the escort fee, or any portion thereof, in addition to pay of the off-duty trooper or DPS police officer.

B.18. - E.1.n. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:3 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 5:26 (February 1979), amended by the Office of Weights, Measures and Standards, LR 22:120 (February 1996), LR 30:1490 (July 2004), amended by the Department of Public Safety and Corrections, Office of State Police, LR 42:1302 (August 2016).

Jason Starnes
Undersecretary

1608#058

Notices of Intent

NOTICE OF INTENT

**Department of Agriculture and Forestry
Office of Animal Health and Food Safety
and
Board of Animal Health**

Alternative Livestock-White Tailed Deer and
Other Captive Cervids (LAC 7:XXI.Chapter 17)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Agriculture and Forestry ("Department"), through the Office of Animal Health and Food Safety, and the Board of Animal Health intends to amend LAC 7:XXI.1705-1725 relative to white tailed deer and other captive cervids in order to align the needs for disease control and facilitate commerce for the alternative livestock industry. The proposed revisions to LAC 7:XXI.Chapter 17 aligns the need for disease control and facilitates commerce for the alternative livestock industry. The proposed Rule clarifies requirements for the commissioning and decommissioning of farm raised white tailed deer pens, update definitions used in Chapter 17, amends the requirements for approval a license and sets forth requirements to be followed in the event of a change of ownership of a farm. The proposed amendments remove the harvesting permit fee and provide that a late fee of \$125 may be assessed if the annual farm raising license fee is not timely paid. The proposed Rule modifies the obligations of a farm-raising licensee with respect to identification of farm raised alternative livestock and also require licensees to keep records for 60 months instead of 36 months. The proposed Rule allows licensure of an area not less than 250 acres and remove a maximum number of acres. The proposed Rule removes the requirement of obtaining a harvesting permit prior to harvesting or killing farm raised alternative livestock. These revisions will remove outdated provisions and maintain consistency with the goals of the department and the industry.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Animals and Animal Health

Chapter 17. Alternative Livestock—White-tailed Deer and other Captive Cervids (Formerly Chapter 15)

§1705. Definitions (Formerly §1503)

A. For purposes of these rules and regulations the following words and phrases shall have the meaning given herein.

Alternative Livestock—any imported or domestically raised exotic deer and antelope, elk or farm-raised white-tailed deer.

Chronic Wasting Disease (CWD)—a transmissible spongiform encephalopathy of cervids.

Commissioner—the commissioner of agriculture and forestry.

* * *

Department—the Louisiana Department of Agriculture and Forestry.

Elk—any animal of the species and genus *Cervus canadensis*.

* * *

Quarantine—the requirement, resulting from an order of the department or the state veterinarian's office, to secure and physically isolate an animal or animals in a specified confined are.

White-Tailed Deer—any animal of the species and genus *Odocoileus virginianus*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1671 (September 1998), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 38:961 (April 2012), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:971 (May 2014), LR 42:

§1707. Issuance of Farm-Raising License; Renewals (Formerly §1505)

A. ...

B. The department shall not issue any farm-raising license until the application for the farm-raising license and the information requested, including the required plan for the operation of the farm, is approved by the department and the proposed farm passes the department's requirements and inspection.

C. Any changes in any information submitted in the original application, occurring during or after the application process, shall be submitted in writing to the department. The department must approve, in writing, any change or modification, which shall be in writing, in the written farm operation plan submitted with the original application before such change or modification, may go into effect.

D. - G. ...

H. A farm-raising license is non-transferrable without written approval from the department. In the event of a change in ownership of a farm, the new owner or operator shall submit a transfer application to the department. The transfer application shall detail any changes in the approved farm operation plan. The transferee shall meet all requirements set forth in this Chapter in order for the transfer to be approved.

1. Upon receipt of the transfer application and all additional requested information, the department shall issue approval or denial of the transfer request within thirty (30) days. If a transfer is denied, the applicant may, within 7 days of receipt of the denial, file an appeal of the department's decision with the Board of Animal Health. The appeal will be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1672 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:972 (May 2014), LR 42:

§1709. Fees

(Formerly §1507)

A. - A.2. ...

B. Delinquent Fees

1. Any farm raised license renewal not received by August 31 may be assessed a late fee of \$125.

C. Farm-Raised Alternative Livestock Tag Fee

1. Each farm-raised alternative livestock harvested or killed shall have a farm- raised harvest tag attached to the left ear or left antler of the carcass at the time of kill and the tag shall remain with the carcass at all times, except as provided in §1709.C.3.

2. The farm-raised alternative livestock tag shall be provided by the department at a cost of \$5 per tag.

3. No farm-raised tag shall be required for farm-raised alternative livestock which are to be taken directly to a state or federally approved slaughter facility or which are sold or traded alive for breeding or stocking purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101 and R.S. 3:3107.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1672 (September 1998), LR 39:3060 (November 2013), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:972 (May 2014), LR 42:

§1711. Farm-Raising Licensing Requirements

(Formerly §1509)

A. - A.11. ...

B. Farm Inspection. An applicant shall have the proposed farm physically inspected and approved by the department before a farm-raising license may be issued by the department. To obtain department approval a proposed farm shall:

1. be located in a rural area of the state;

2. be securely enclosed by an enclosure system, including fencing, that meets the following specifications:

a. a minimum height, above the relevant ground, of 8 feet;

b. enclose an area of not less than 250 acres to be eligible for harvesting as provided by §1709 of these rules and regulations. Applicants seeking eligibility to harvest on farms with enclosures of less than 300 acres must demonstrate good cause why an enclosure of a different size is not inconsistent with the intent of part I of chapter 19-A of title 3 of the *Revised Statutes*; No farm less than 300 acres will be approved unless more than 60% of the farm is wooded or heavy brush.

c. a minimum gauge wire of 12 1/2;

d. fencing material of chain link, woven wire, solid panel or welded panel or, if made with any other material, approved in writing by the department, however, welded wire fences shall not be used unless it was approved by LDWF and installed prior to April 22, 1997, but, such welded wire fences, when replaced or partially replaced, shall be replaced by fencing required by these rules and regulations;

3. have drainage sufficient to leave a majority of the farm free from extended periods of standing water;

4. have adequate space and if the total enclosed area of the farm is less than 50 acres, allow at least 5,000 square feet for the first elk or farm-raised white-tailed deer placed on the farm and at least 2,500 square feet for each subsequent elk or farm-raised white-tailed deer;

5. have no condition which may cause noncompliance with or substantial difficulty in complying with part I of chapter 19-A of title 3 of the *Revised Statutes*, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine;

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1673 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:973 (May 2014), LR 42:

§1713. Grounds for Refusal to Issue or Renew a Farm-Raising License

(Formerly §1511)

A. - A.4. ...

5. the proposed farm does not pass the department's inspection;

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1673 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:974 (May 2014), LR 42:

§1715. Obligations of the Farm-Raising Licensee

(Formerly §1513)

A. Identification of Farm-Raised Alternative Livestock

1. All farm-raised white-tailed deer shall be identified by means of an electronic implant implanted as follows:

a. the electronic implant shall be implanted into the subcutaneous tissue at the base of the left ear;

b. all farm-raised white-tailed deer being brought into Louisiana shall have the electronic implant implanted before entering this state and prior to being released on the farm;

c. farm-raised white-tailed deer born in this state shall have an electronic implant implanted the first time the farm raised white-tailed deer is captured alive and before the farm-raised white-tailed deer leaves the farm;

d. each electronic implant code shall be listed on the farm-raised white-tailed deer's health certificate and on the bill of sale or certificate of transfer.

2. All farm-raised alternative livestock other than farm-raised white-tailed deer shall be permanently and individually identified as follows:

a. by means of an electronic implant or by a permanent ear tattoo and ear tag;

b. the electronic implant shall be implanted into the subcutaneous tissue at the base of the left ear;

c. prior to entering the state, alternative livestock, other than farm-raised white-tailed deer, shall be identified as required herein;

d. alternative livestock born in this state, other than farm-raised white-tailed deer, shall be identified as required herein, the first time any such animal is captured alive and before any such animal leaves the farm;

e. the identification number or electronic implant code, and the location thereof, shall be listed on the health certificate and the bill of sale or certificate of transfer.

3. - 4. ...

B. Record Keeping

1. Each licensee shall maintain records, for not less than 60 months, of all sales, deaths, kills, trades, purchases, or transfers of any farm-raised alternative livestock. The records shall include:

a. - f. ...

2. Sellers, traders or transferors of farm-raised alternative livestock, any carcass, or any part thereof, shall furnish the purchaser or transferee with a bill of sale or letter of transfer as verification of the farm-raised status. A copy of the bill of sale shall be submitted to the department within 10 business days of the transaction.

3. The furnishing of any false information shall be a violation of these rules and regulations.

C. - C.2. ...

3. Any licensee who discovers a breach or opening in the enclosure system or fence that would allow farm-raised alternative livestock to leave from or wild white-tailed deer to enter into the enclosed area shall notify, orally and in writing, the department of the breach or opening and the department shall notify LDWF within 12 hours.

4. In the event of such a breach or opening the licensee shall immediately close the breach or opening and make all reasonable efforts to determine if farm-raised alternative livestock left from or wild white-tailed deer entered into the area enclosed by the fence.

D. Other Obligations of the Farm Licensee

1. A licensee shall make all reasonable efforts to remove white-tailed deer from the farm prior to completion of the fencing and enclosure system of the farm. Removal of the white-tailed deer may include the following steps:

a. upon completion of fencing and enclosure, LDAF shall inspect the enclosure for the presence of native white-tailed deer and inspection of enclosure;

b. if the inspection reveals the presence of native white-tailed deer, the licensee shall attempt to eradicate the deer concurrent with one legal hunting season;

i. the licensee may enroll in LDWF's DMAP for harvest tags to facilitate eradication.

c. final inspection of the premises for the presence of native white-tailed deer shall be performed by the department, with input from LDWF. The final decision regarding licensure shall be made by the department.

2. A licensee shall control the population of farm-raised alternative livestock on the farm.

3. A licensee shall make all efforts that a reasonable licensee would make to capture any farm-raised alternative livestock that escapes from the fenced area of the farm and to remove wild white-tailed deer that enters the fenced area of the farm.

4. A licensee shall, in writing, notify the department, at least 10 days prior to placing any alternative livestock on the farm if such alternative livestock was not listed on the

original application or on any modification previously approved, in writing, by the department.

5. A licensee upon cessation of operations, or upon revocation or nonrenewal of the farm-raising license shall make all reasonable efforts to remove and dispose of all farm-raised alternative livestock on the farm in accordance with the farm operation plan submitted to and approved by the department or in accordance with specific written instructions issued by the department in the event that circumstances warrant removal and disposal of the farm-raised alternative livestock to be made in a manner different from the farm operation plan. Farm-raised alternative livestock on the farm may be transferred to another licensed farm or eradicated concurrent with one legal hunting season. If, at the end of one legal hunting season, farm-raised alternative livestock remain on the property, the licensee may request LDAF harvest tags as needed.

a. Prior to decommissioning of the farm and removal of the enclosure, the licensee shall test 10% of cervids 12 months and older for CWD using a USDA approved method of testing.

b. Prior to decommissioning of the farm and removal of the enclosure, LDWF and LDAF shall conduct a final inspection of the farm to ensure that all reasonable efforts to remove and dispose of all farm-raised alternative livestock on the farm have been made. Final approval for decommissioning of the farm and removal of the enclosure shall be granted by LDAF.

6. - 8. ...

9. A licensee shall allow authorized representatives of LDAF to inspect the farm at any time and all books and records at any reasonable time.

10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1674 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:974 (May 2014), LR 42:

§1717. Health Certificates and Health Requirements (Formerly §1515)

A. - A.3. ...

4. have written proof of a negative tuberculin skin test or a serological test for tuberculosis that meets the following requirements;

a. the tuberculin skin test or serological test for tuberculosis is one of the official tuberculosis tests approved by the U.S. Department of Agriculture for use on the species of alternative livestock for which permission to enter the state is being sought;

b. the test was administered and read in accordance with the USDA requirements for the administering and reading of that test;

B. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1675 (September 1998), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 38:961 (April 2012), amended by the Department of Agriculture and Forestry, Office of the

Commissioner, LR 39:3247 (December 2013), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:975 (May 2014), LR 42:

§1719. Harvesting or Killing of Farm-Raised Alternative Livestock (Formerly §1517)

A. - B. ...

C. The commissioner may establish, by written order, other dates and conditions for the harvesting or killing of farm-raised alternative livestock as the commissioner deems necessary to carry out the purposes of part I of chapter 19-A of title 3 of the *Revised Statutes*. Such orders shall be issued by the commissioner in January of each year or as soon thereafter as is practical and published in the January issue of the *Louisiana Register* or in the first available issue after any such order is issued.

D. Except as provided by §1709.C.3 of these regulations, any farm-raised alternative livestock harvested or killed, shall have a farm-raised tag attached to the left ear or left antler of the carcass at the time of the kill and the tag shall remain with the carcass at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1675 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:977 (May 2014), LR 42:

§1721. Prohibitions (Formerly §1519)

A. No farm-raised alternative livestock shall be released into the wild.

B. Farm-raised white-tailed deer meat shall not be bought, sold, traded, or moved in commerce in any way except when taken to state or federally approved slaughter house. Whitetail deer antlers and capes may be sold if the farm of origin is not under quarantine by the department.

C. Farm-raised alternative livestock sold for slaughter, the sale of which is prohibited, shall be handled in accordance with state and federal meat inspection laws and regulations.

D. It is a violation of these regulations to sell, purchase, trade, transport, or otherwise transfer any farm-raised alternative livestock for any purpose other than immediate slaughter at a state or federally approved slaughter facility if such farm-raised alternative livestock originates from a herd which is under quarantine for *Brucellosis* or tuberculosis.

E. Failure to comply with any provision of part I of chapter 19-A of title 3 of the *Revised Statutes*, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine is prohibited and each act or omission or each day of a continuing violation shall constitute a separate violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1676 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:977 (May 2014), LR 42:

§1723. Enforcement (Formerly §1521)

A. The department's authorized representatives may, at any time, enter and inspect all farms on which farm-raised alternative livestock are located for the purposes of issuing, renewing or reviewing farm-raising licenses and to insure compliance with part I of chapter 19-A of title 3 of the *Revised Statutes*, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine.

B. Authorized representatives of the department may inspect, during any reasonable hours, any records regarding or relating to any farm-raised alternative livestock.

C. Farm-raised alternative livestock which escapes from the enclosure system of the farm, if not captured by a licensee within 96 hours of the escape, may be captured or killed by authorized representatives of the department or by LDWF or any law enforcement agency by whatever means deemed necessary by that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1676 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:977 (May 2014), LR 42:

§1725. Penalties (Formerly §1523)

A. ...

B. The commissioner may, in addition to suspending or revoking any farm-raising license, impose upon any person charged with violating any provisions of part I of chapter 19-A of title 3 of the *Revised Statutes*, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine, a fine for up to \$100 per violation for each violation such person is found guilty.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1676 (September 1998), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:978 (May 2014), LR 42:

Family Impact Statement

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to John Walther, Assistant Commissioner of Animal Health and Food Safety, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 4000, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on the October 5, 2016. No preamble is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Alternative Livestock-White Tailed Deer and Other Captive Cervids

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revisions to LAC 7:XXI.Chapter 17 align needs for disease control and facilitate commerce for the alternative livestock industry. The proposed rule change's revision of alternative livestock requirements will have no associated costs or savings to the state other than the cost of promulgation for FY 17.

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

The proposed rules will not result in an increase or decrease in revenue collections to state or local governmental units.

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

Individuals who possess or wish to possess a farm raised alternative livestock license will be affected by the proposed rules. However, the proposed rules will not result in an

increase in costs or paperwork to these individuals. Under the proposed rules, farm raising licensees will have to maintain records for 60 months instead of 36 months.. Although the proposed rule changes do add a \$125 delinquency fee for farm raised license renewals, the department does not anticipate many cases in which this fee would be collected because most licenses are timely renewed.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules are not anticipated to have an effect on competition or employment.

Dane Morgan
Assistant Commissioner
1608#063

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Forestry

Forest Productivity Program (LAC 7:XXXIX.Chapter 13)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through authority granted in accordance with Act 591 of 1970 and R.S. 3:4402, notice is hereby given that the Department of Agriculture and Forestry ("department"), through the Office of Forestry, intends to amend and enact the above cited regulation. LAC 7:XXXIX.1307 is being amended to allow private landowners to cost share an two additional services at a higher rate through the Forest Productivity Program. The amendments to §1307 will also remove the services/practices that are not often used or are able to be cost-shared with the introduction of new services/practices and rates. The amendment to §1311 exempts prescribed burning from the list of practices which require the landowner to maintain the land in forestry usage for ten years from the date the department approves the cooperative agreement. This will encourage prescribed burning, which helps reduce the frequency and intensity of wildfires. The amendments to §1315 reduce the forestry practice implementation period from 24 months to 11 months in order to align the program with the state fiscal year.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 13. Forestry Productivity Program

§1307. Extent of State Participation

A. - C. ...

D. The maximum cost share rates are established as follows. Fifty percent of the cost per acre shall not exceed the following rates.

1. Regeneration

a. Pine (loblolly, slash or shortleaf, planting and seedling cost): \$50/acre

b. Containerized Pine (loblolly, slash or shortleaf, planting and seedling cost): \$60/acres

c. Hardwood (planting and seedling cost): \$90.00/acre

d. Containerized Hardwood (planting and seedling cost): \$110/acre

e. Labor Only (pine or hardwood): \$25/acre

- f. Labor Only (containerized pine or hardwood): \$35/acre
- g. Longleaf Pine (planting and seedling cost): \$60/acre
- h. Containerized Longleaf Pine (planting and seedling cost): \$80/acre
- 2. Site Preparation
 - a. Light (disking, mowing, or sub-soiling): \$15/acre
 - b. Burn (cut-over areas or agriculture lands): \$25/acre
 - c. Chemical: \$60/acre
 - d. Mechanical: \$100/acre
 - e. Post-site Preparation (aerial, ground, or injection): \$50.00/acre
 - f. Herschal Drag: \$40/acre
- 3. Control of Competing Vegetation
 - a. Chemical Release (aerial, ground, or injection): \$50.00/acre
 - b. Prescribed Burn: \$20.00/acre
- E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4412 and R.S. 3:4413.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1679 (September 1998), amended by the Department of Agriculture and Forestry, Office of Forestry, LR 28:267 (February 2002), LR 34:2338 (November 2008), LR 41:2102 (October 2015), LR 42:

§1311. Obligations of the Landowner

- A. ...
- B. The landowner shall maintain the land subject to the cooperative agreement in forestry usage in accordance with the cooperative agreement for a period of at least 10 years from the date the department issues a certification of performance of the terms of the cooperative agreement. This requirement shall not apply when the approved practice is prescribed burning.

C. - D. ...
 AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4413.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1680 (September 1998), LR 42:

§1315. Forestry Practice Implementation Period

- A. Each landowner shall have 11 months to complete the forestry practice or practices authorized by the cooperative agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4413 and R.S. 3:4415.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1680 (September 1998), amended by the Department of Agriculture and Forestry, Office of Forestry, LR 28:267 (February 2002), LR 42:

Family Impact Statement

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

- 1. the stability of the family;
- 2. the authority and rights of persons regarding the education and supervision of their children;
- 3. the functioning of the family;
- 4. family earnings and family budget;

- 5. the behavior and personal responsibility of children;
- 6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

- 1. the effect on household income, assets, and financial security;
- 2. the effect on early childhood development and preschool through postsecondary education development;
- 3. the effect on employment and workforce development;
- 4. the effect on taxes and tax credits;
- 5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

- 1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
- 2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
- 3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Wade Dubea, State Forester, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 6000, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on the October 5, 2016. No preamble is available.

Mike Strain, DVM
 Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Forest Productivity Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed amendments to LAC 7:XXXIX.1307, 1311 and 1315 will result in an increase in expenditures from the Forestry Productivity Fund. The proposed amendment to Rule 1307 allows private landowners to cost share two services at a higher rate through the Forest Productivity Program: Burn Site Preparation (up to \$25/acre) and Prescribed Burn Control of Competing Vegetation (up to \$20/acre) while also removing and/or consolidating some forestry practices that are not often used. The proposed amendment to Rule 1315 reduces the forestry practice implementation period from 24 months to 11 months in order to align the program with the state fiscal year.

This will allow landowners to cost share up to \$15,000 per calendar year instead of every 24 months.

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

The proposed rule changes are not anticipated to have a direct material effect on revenue collections of state or local governmental units.

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

The amendment to Rule 1307 will allow private landowners to cost share some services at a higher rate through the Forest Productivity Program: Burn Site Preparation (up to \$25/acre) and Prescribed Burn Control of Competing Vegetation (up to \$20/acre). The amendment to Rule 1307 will allow for the deletion of services/practices that are not often used or are able to be cost-shared with the introduction of new services/practices and rates. The amendment to Rule 1315 may result in an economic benefit to landowners because it will allow them to cost share up to \$15,000 per year instead of every two years for qualified forestry practices/services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not have a material effect on competition and employment.

Dane Morgan
Assistant Commissioner
1608#062

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System
(LAC 28:LXXXIII.301, 405, and 613)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the revision of *Bulletin 111—The Louisiana School, District, and State Accountability System*: §301, School Performance Score Goal; §405, Calculating a K-8 Assessment Index; and §613, Calculating a Graduation Index. These proposed changes update language regarding the ACT index, the kindergarten through eighth grade social studies field test, and the enrollment policy related to the awarding of fifth-year graduate points.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 3. School Performance Score Component

§301. School Performance Score Goal

A. - C.2. ...

* * *

3. For schools with a grade 12, the school performance scores will include four indicators weighted equally and progress points as outlined in the table below.

High School Performance Score Indices and Weights		
End of Course Tests, LAA 1	Grades 9-12	25 percent

High School Performance Score Indices and Weights		
ACT* (Beginning in 2015-16, the ACT index shall also recognize WorkKeys. A concordance table comparing ACT to WorkKeys will be produced after the Spring 2015 administration.)	Grade 12 and graduating students with last enrollment as grade 11	25 percent
Graduation Index	Grade 12	25 percent
Graduation Rate	Grade 12	25 percent
Progress points	Grades 10 and 12	Up to 10 points

*When calculating a school's ACT index score, students participating in the LAA 1 assessment shall not be included in the denominator of such calculation.

C.4. - D.3.c.i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034, 2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007), LR 33:2593 (December 2007), LR 34:430 (March 2008), LR 35:639 (April 2009), LR 36:1987 (September 2010), LR 38:3105 (December 2012), LR 39:305 (February 2013), LR 39:1421 (June 2013), LR 39:2441 (September 2013), LR 40:1313 (July 2014), LR 40:2507 (December 2014), LR 41:1481 (August 2015), LR 41:2578 (December 2015), LR 42:

Chapter 4. Assessment and Dropout/Credit Accumulation Index Calculations

§405. Calculating a K-8 Assessment Index

A. - G. ...

H. In the 2015-2016 school year, the social studies test will be administered as a field test only. When calculating the K-8 assessment index for the 2015-2016 school year, either the 2013-2014 or 2014-2015 social studies assessment index, whichever yields the higher school performance score, shall be used as the social studies component of the overall assessment index and will be weighted by the 2015-2016 science assessment index tested population in order to limit impact of population changes from prior years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 36:1989 (September 2010), LR 38:3106 (December 2012), LR 41:2579 (December 2015), LR 42:548 (April 2016), LR 42:

Chapter 6. Graduation Cohort, Index, and Rate

§613. Calculating a Graduation Index

A. - E.1.a. ...

2. When related to awarding fifth-year graduate points, the enrollment must be continuous and consist of at least 45 calendar days only if the student graduates from an LEA different than the one to which the student was assigned in the fourth year.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243

(October 2010), LR 37:3201 (November 2011), LR 38:1391 (June 2012), LR 38:3109 (December 2012), LR 39:306 (February 2013), LR 39:2444 (September 2013), LR 40:1317 (July 2014), LR 41:615 (April 2015), LR 42:1017 (July 2016), LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There is no anticipated impact to costs or savings to state or local governmental units as a result of the policy changes.
The proposed revisions update language regarding the ACT index, the kindergarten through eighth grade social studies field test, and the enrollment policy related to the awarding of fifth-year graduate points. Currently, Grade 12 students are included in the ACT index. Due to updates to the student transcript system to include Grade 11 graduates, the proposed changes update policy so that these Grade 11 graduates are included in the ACT index. Relative to the kindergarten through eighth grade social studies field test policy, the proposed changes weight the carried forward social studies assessment for the 2015-2016 testing population in order to limit the impact of population changes. Finally, in order to award fifth-year graduate points, the student must be enrolled for a minimum of 45 days. The proposed changes remove the 45-day enrollment rule if the student is graduating from the same LEA.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This policy change will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1608#027

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools—Length of the Initial Term for Type 3B Charter Schools (LAC 28:CXXXIX.519)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement to revise §519, Local School Board Consideration of Charter Application, Awarding of Charters, of *Bulletin 126—Charter Schools*. Act 91 of the 2016 Regular Legislative Session provides for the unification of public schools in Orleans Parish under the oversight of the Orleans Parish School Board. The proposed revisions align the process for determining the length of initial type 3B charter terms to the process provided for in Act 91 of the 2016 Regular Legislative Session.

Title 28

EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 5. Charter School Application and Approval Process

§519. Local School Board Consideration of Charter Application, Awarding of Charters

A. - B.3.d.ii. ...

4. The length of the initial term for the type 3B charter school shall be equal to the number of years remaining on the charter school's former type 5 charter contract or the number of years approved by BESE for the renewal term of the type 5 charter school if the charter contract for the type 5 charter school was set to expire at the conclusion of the school year in which the charter school makes a request to transfer to the local school board pursuant to this Section.

5. - 6.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 37:2385 (August 2011), amended LR 39:3065 (November 2013), LR 39:3249 (December 2013), LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 126—Charter Schools Length of the Initial Term for Type 3B Charter Schools

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions will have no effect on costs or savings to state or local governmental units.

Act 91 of the 2016 Regular Legislative Session provides for the unification of public schools in Orleans Parish under the oversight of the Orleans Parish School Board. The proposed revisions align the process for determining the length of initial Type 3B charter terms to the process provided for in Act 91 of the 2016 Regular Legislative Session.

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

This policy change will have no effect on revenue collections of state or local governmental units.

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

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1608#028

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
Return of Schools to Local School Board
(LAC 28:CXLV.505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement to revise §505, Return of Schools to Local School Board, of *Bulletin 129—The Recovery School District*. Act 91 of the 2016 Regular Legislative Session provides for the unification of public schools in Orleans Parish under the oversight of the Orleans Parish School Board. This revision adds language from Act 91 of the 2016 Regular Legislative Session that provides for specific responsibilities of BESE as it relates to the potential postponement of the unification of schools in Orleans Parish for specified reasons.

**Title 28
EDUCATION**

**Part CXLV. Bulletin 129—The Recovery School District
Chapter 5. Failed Schools**

§505. Return of Schools to Local School Board

A. - B.1. ...

2. A non-failing charter school is eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

a. The charter school will have been under the jurisdiction of the Recovery School District for a minimum of five years. A charter school shall be considered to have been under the jurisdiction of the RSD for five years when five complete school years have passed since the approval of the transfer to the RSD by BESE under R.S. 17:10.5 or 17:10.7, regardless of changing operators or site codes for the charter school since that time. The decision to transfer will be considered at the earliest during the charter school's fifth year under the jurisdiction of the RSD, with the

proposed transfer occurring at the conclusion of that same school year.

2.b. - 4. ...

5. BESE shall only approve a charter school board request to transfer to the charter school to the jurisdiction of the local school board if the following requirements are met:

a. - b.vi.(b). ...

C. Unification of Schools Pursuant to R.S. 17:10.7.1

1. No sooner than July 1, 2018, and no later than July 1, 2019, type 5 charter schools located in Orleans Parish shall be transferred to the jurisdiction of the Orleans Parish School Board pursuant to the timelines and procedures detailed in R.S. 17:10.7.1.

2. The transfer of charter schools from the RSD to the Orleans Parish School Board pursuant to R.S. 17:10.7.1 shall occur on July 1, 2018, unless such transfer is postponed by a majority vote of the full membership of the Orleans Parish School Board or the full membership of BESE.

3. BESE or the Orleans Parish School Board may approve such postponement only if one or more of the following apply.

a. The Orleans Parish School Board is not financially stable.

b. The Orleans Parish School Board lacks a comprehensive expulsion and reentry program for students.

c. The Orleans Parish School Board cannot assure the stability of employee retirement benefits.

d. The Orleans Parish School Board cannot ensure or provide sufficient insurance coverage.

e. The superintendent for the Orleans Parish School Board and the superintendent of the RSD provide written certification that it is not feasible to meet the time lines, tasks, and benchmarks established in the plan to effect the return of schools from the Recovery School District to the jurisdiction of the Orleans Parish School Board as provided in R.S. 17:10.7.1.

f. The advisory committee created pursuant to R.S. 17:10.7.1, by a majority vote of its full membership, officially requests the Orleans Parish School Board or BESE consider such postponement.

4. Any action taken by the Orleans Parish School Board or BESE to postpone the final transfer of schools from the RSD to the Orleans Parish School Board must occur no later than January 31, 2018, and in no instance shall such postponement extend the final transfer date beyond July 1, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5(A)(1), R.S. 17:10.7(A)(1), R.S. 17:1990(A)(2), R.S. 17:10.5(C), and R.S. 17:10.7(C).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:878 (March 2011), amended LR 38:354 (February 2012), LR 38:1396 (June 2012), LR 39:82 (January 2013), LR 39:1022 (April 2013), LR 39:3255 (December 2013), LR 42:551 (April 2016), LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word “poverty” means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N.

Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Bulletin 129—The Recovery School District—Return of Schools to Local School Board

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions will have no effect on costs or savings to the state. There will be an increase in expenditures of the Orleans Parish School Board (OPSB), with a corresponding reduction in expenses of the Recovery School District (RSD) as a result of the unification of schools located in Orleans Parish. The net impact is indeterminable at this time.

Act 91 of the 2016 Regular Legislative Session provides for the unification of public schools in Orleans Parish under the oversight of the Orleans Parish School Board. This revision adds language from Act 91 of the 2016 Regular Legislative Session that provides for specific responsibilities of BESE and the Orleans Parish School Board as it relates to the timeframe for the transfer and the potential postponement of the unification of schools in Orleans Parish for specified reasons.

Currently, certain oversight and coordinating functions and responsibilities are shared by both the OPSB and the RSD. As a result of the unification, these functions and responsibilities will transfer to the OPSB including Portfolio Management, Citywide Services and Enrollment, Facilities, Local Educational Authority (LEA) Responsibilities, Family and Stakeholder Engagement, and Finance and Operations resulting in an increase in expenditures. The OPSB projects additional staffing needs and increased operating expenses as well as one-time transition expenses. However, there may be some savings realized through the combination of overlapping functions in the OPSB and the RSD. A financial analysis is ongoing and the net impact will be determined and included in the final transition plan as required by R.S. 17:10.7.1.

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

Self-generated revenues currently collected by the RSD will subsequently transfer to the OPSB to be used for the integration of administrative and oversight functions into the OPSB operations. This includes authorized fees paid by charter schools to the school board as well as set aside funding for a facilities preservation program authorized by Act 543 of 2014; there is no net change in these revenues.

MFP funding for Type 5 schools is allocated to the RSD for distribution to the schools. As a result of the transfer back to the OPSB, schools may opt to exercise the authority to operate as their own Local Education Authority as a Type 3B school. MFP funding would therefore flow directly to the schools, rather than through the OPSB.

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

There may be changes to the allocation and distribution of MFP funds to charter schools due to the requirements of the unification plan regarding participation in a parish-wide enrollment system, lottery preferences, and a district level funding allocation based on student characteristics or needs.

Such changes will be determined based on each schools' enrollment and the application of such policies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be a reduction in staffing at the RSD and an increase in staffing at the OPSB. It is unknown at this time whether the unification will result in a net increase or net decrease in employment opportunities for existing and new personnel.

Beth Scioneaux
Deputy Superintendent
1608#029

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 139—Louisiana Child Care and Development Fund Programs (LAC 28:CLXV.103 and 515)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement to revise *Bulletin 139—Louisiana Child Care and Development Fund Programs*: §103, Definitions; and §515, Payments Made on Behalf of Households. Act 3 of the 2012 Regular Legislative Session required the state board with unifying the early childhood system to prepare all children for kindergarten. The proposed revisions adjust Child Care Assistance Program (CCAP) eligibility and rates for families with children with special needs so that quality child care is more accessible and affordable for such families.

**Title 28
EDUCATION**

Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs

Chapter 1. Child Care Assistance Program

§103. Definitions

Special Needs Child Care—for the purpose of CCAP daily rates, child care for a child through age has a current individualized family services plan (IFSP) or individual education plan (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA). Incentive payments up to 26 percent higher than the regular rates can be allowed for a special needs child care. For children qualifying for the special needs child care rate, child care teachers shall be invited to participate in the IEP or IFSP team.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR part 98 and R.S. 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2109 (October 2015), amended LR 42:42 (January 2016), LR 42:

Chapter 5. CCAP Household Eligibility

§515. Payments Made on Behalf of Households

A. The state maximum daily rates for CCAP care are as follows.

Child Care Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Type III Early Learning Center	\$21.50	\$22.50	\$27.00	\$28.25
School Child Care Center	\$15.00	\$16.00	\$18.75	\$20.00
Family Child Care Provider	\$15.00	\$16.00	\$18.75	\$20.00
In-Home Provider	\$14.50	\$15.50	\$18.25	\$19.50
Military Child Care Centers	\$21.50	\$22.50	\$27.00	\$28.25

B. - F.5. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR parts 98 and 99, and R.S. 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2116 (October 2015), amended LR 42:44 (January 2016), LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: *Bulletin 139—Louisiana Child Care and Development Fund Programs*

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an increase in Child Care Assistance Program (CCAP) payments made by the Louisiana Department of Education (LDE) to child care providers on behalf of eligible children. CCAP subsidies are funded through the federal Child Care and Development Fund. The extent of the increase is indeterminable and will depend upon the number of eligible families approved for the increased subsidy.

Act 3 of the 2012 Regular Legislative Session required the state Board of Elementary and Secondary Education (BESE) with unifying the early childhood system to prepare all children for Kindergarten. The proposed revisions adjust Child Care Assistance Program (CCAP) eligibility and rates for families with children with special needs so that quality child care is more accessible and affordable for such families.

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

This policy change will have no effect on revenue collections of state or local governmental units.

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

There will be a reduction in child care costs for families that qualify for the increased subsidy payment, making child care for special needs children more accessible and affordable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1608#037

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 140—Louisiana Early Childhood Care and Education Network (LAC 28:XCI.101, 103, 313, 503, 509-517, 521, 703-709, and 713)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement to revise *Bulletin 140—Louisiana Early Childhood Care and Education Network*: §101, Purpose §103, Definitions; §313, Academic Approval for Type III Early Learning Centers; §503, Coordinated Observation Plan and Observation Requirements; §509, Performance Rating Calculations for Publicly-Funded Sites; §511 Performance Rating Calculations for Community Networks; §512, Performance Ratings for Publicly-Funded Sites; §513, Informational Metrics of Best Practices; §515, Reporting for the Accountability System; §517, Data Verification; §521, Performance Profile Appeals Procedure; §703, Coordinated Enrollment Process; §705, Implementation Timeline; §707, Demonstrated Progress Toward Implementation; §709, Community Network Request for Funding for Publicly-Funded Programs; and §713, Request for Departmental Review. Bulletin 140 is a set of regulations focused specifically on early childhood community networks, which ensure one organization within each local community network coordinates across programs, set clear expectations for implementation of coordinated enrollment as required by Act 717 of the 2014 Regular Legislative Session and establish processes to ensure fairness and equity for providers and families, and establish a unified quality and improvement system. The first year of implementation of policy contained in Bulletin 140 was a learning year and the policy itself calls for revision of policy prior to the start of the 2016-2017 year.

The proposed revisions reflect key shifts based on results from the 2015-2016 learning year. First, the proposed revisions communicate differences in quality by weighting domains equally and using a four-level scale in order to help families understand differences. Second, the proposed revisions honor quality and improvement by providing for the release of an annual honor roll that will recognize sites that are rated “excellent.” Sites and networks that improve scores or ratings will also be recognized as “top gains.” Third, the proposed revisions provide that sites that consistently fail to reach minimum expectations by earning

an “unsatisfactory” rating for two years in any three-year period will lose approval and funding. Fourth, the proposed revisions provide that high scores, low scores, and concerning patterns will trigger additional third-party observations, whereby third-party scores will be used instead of local observations. Fifth, the proposed revisions add elements to reports concerning parent choice and funding decision-making, and support communities in order for local systems to continue to improve. Sixth, the proposed revisions provide that type III early learning centers shall participate in the quality rating and improvement system in order to receive or renew academic approval. Approval will be tied to performance within the accountability system for future years.

Title 28
EDUCATION

Part CLXVII. Bulletin 140—Louisiana Early Childhood Care and Education Network

Chapter 1. General Provisions

§101. Purpose

A. The purpose of this bulletin is to establish the duties and responsibilities of the early childhood care and education network, local community networks, community network lead agencies, and publicly-funded early childhood care and education programs; establish performance and academic standards for kindergarten readiness; define kindergarten readiness; and create a uniform assessment and accountability system for publicly-funded early childhood care and education sites and community networks that includes a performance profile indicative of performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2580 (December 2015), amended LR 42:

§103. Definitions

* * *

Assurances—see *program partner assurances*.

* * *

Program Partner Assurances—assurances that early childhood care and education programs must submit to the department in order to access their public funding.

* * *

School Year—for purposes of this bulletin, July 1-June 30.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.23 and R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2580 (December 2015), amended LR 42:

Chapter 3. Early Childhood Care and Education Network

§313. Academic Approval for Type III Early Learning Centers

A. All type III early learning centers shall meet the performance and academic standards of the early childhood care and education network regarding kindergarten readiness as provided in this bulletin.

B. - C. ...

D. Initial Academic Approval for an Applicant for a New Type III Early Learning Center License for Fiscal Years 2016-2017 and Beyond

1. In order to obtain the initial academic approval required to be licensed as a type III early learning center, a center applying for a new type III license must:

a. submit a signed copy of the current program partner assurances to the department, thereby agreeing to comply with the provisions of this bulletin, which include:

i. membership in the corresponding community network, as provided in Chapter 3;

ii. participation in the early childhood care and education accountability system, as provided in Chapter 5; and

iii. participation in the coordinated enrollment process, as provided in Chapter 7.

2. An applicant for a new type III early learning center license who has held a type III early learning center license and received a corrective action plan as provided in §313(K)(2)(a) at any time during the current or preceding fiscal year shall not be allowed to apply for academic approval for the fiscal year in which the center received a corrective action plan and the following fiscal year.

E. Renewal of Academic Approval for Type III Early Learning Centers for the Fiscal Years 2016-2017 and 2017-2018

1. Academic approval shall be renewed annually for fiscal years 2016-2017 and 2017-2018 for any type III early learning center that:

a. has current academic approval;

b. is in compliance with the provisions of this bulletin; and

c. has submitted a signed copy of the current annual program partner assurances to the department, and is thereby agreeing to comply with the provisions of this bulletin, which include:

i. membership in the corresponding community network, as provided in Chapter 3;

ii. participation in the early childhood care and education accountability system, as provided in Chapter 5; and

iii. participation in the coordinated enrollment process, as provided in Chapter 7.

2. Type III early learning centers shall annually submit a signed copy of the annual program partner assurances to the department prior to July 1, or as requested by the department, whichever occurs earlier.

F. Renewal of Academic Approval for Existing Type III Early Learning Centers for Fiscal Year 2018-2019 and Beyond

1. Academic approval shall be renewed annually for fiscal years 2018-2019 and beyond for any type III early learning center that:

a. has current academic approval;

b. is in compliance with the provisions of this bulletin;

c. has not had two unsatisfactory performance ratings within any consecutive three school years; and

d. has submitted a signed copy of the current annual program partner assurances to the department, and is thereby agreeing to comply with the provisions of this bulletin, which include:

i. membership in the corresponding community network, as provided in Chapter 3;

ii. participation in the early childhood care and education accountability system, as provided in Chapter 5; and

iii. participation in the coordinated enrollment process, as provided in Chapter 7.

2. Early learning centers shall annually submit a signed copy of annual program partner assurances to the department prior to July 1, or as requested by the department, whichever is earlier.

G. A center that has its academic approval terminated may not apply for academic approval for the fiscal year in which academic approval was terminated or the following fiscal year.

H. Academic approval shall be valid for the fiscal year, July 1-June 30, for which it is granted.

I. Academic approval is granted to a specific owner and a specific location and is not transferable. If a type III early learning center changes owners or location, it is considered a new operation, and academic approval for the new owner or location must be obtained prior to beginning operations under new ownership or at the new location.

J. Upon a change of ownership or change of location, the academic approval granted to the original owner or at the original location becomes null and void.

K. Renewal

1. Prior to July 1 of each year, the department shall send notice to each type III early learning center that has academic approval providing one of the following:

- a. renewal of academic approval for the center;
- b. notice of the center's failure to comply with specific requirements in Subsection A of this Section and specific corrective actions that must be taken by a specified date in order for academic approval to be renewed; or
- c. if an early learning center has received the notice outlined in Subparagraph H.2.a of this Section within the academic year and the center has not provided the required certifications and completed the stated corrective actions, the department may terminate the center's academic approval as provided in Subparagraph H.2.c of this Section and send notice of termination of the center's academic approval.

L. Denial, Termination or Refusal to Renew Academic Approval

1. The department may deny terminate, or refuse to renew academic approval for:

- a. violations of any provisions of this bulletin;
- b. failure to timely comply with a corrective action plan provided by the department;
- c. any act of fraud, such as the submission of false or altered documents or information;
- d. failure to timely submit a signed copy of the annual program partner assurances; or
- e. two unsatisfactory performance ratings within any consecutive three school years.

2. Notice

a. If a type III early learning center is in violation of any provision of this bulletin, the department shall notify the center in writing and may specify any corrective actions in a corrective action plan that shall be required to retain academic approval.

b. Within 30 calendar days of receiving such notice, the center shall submit certification in writing to the department that the corrective actions specified in the

corrective action plan have been taken or are in the process of being taken in compliance with the schedule provided in the corrective action plan and certification that the center will remain in compliance with the corrective action plan and all applicable regulations.

c. If the type III early learning center does not respond in a timely or satisfactory manner to the notice and corrective action plan or adhere to the implementation schedule required in the corrective action plan, the department may terminate or refuse to renew the center's academic approval.

d. The department shall provide written notice of denial, termination or refusal to renew academic approval to the center.

e. The denial, termination or refusal to renew a center's academic approval shall be effective when notice of the denial, termination, or refusal to renew is given.

M. Appeal Procedure

1. BESE shall have the authority to grant an appeal of the denial, termination or refusal to renew academic approval for a type III early learning center.

2. ...

3. A type III early learning center may request an appeal of the denial, termination, or refusal to renew its academic approval by submitting a written request for an appeal to the department within 15 calendar days of being given notice of the denial, termination, or refusal to renew its academic approval.

4. - 5. ...

6. An early learning center that appeals the termination or refusal to renew its academic approval shall retain its academic approval during the appeal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.36(C) and R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2584 (December 2015), amended LR 42:

Chapter 5. Early Childhood Care and Education Accountability System

§503. Coordinated Observation Plan and Observation Requirements

A. - B.4.c. ...

5. The department shall monitor observer accuracy within each observation period by comparing the domain-level results from classroom observations conducted by the department's third-party contractors to the domain-level results from classroom observations conducted by the community network for each observer.

a. Within each observation period, for observations conducted by a community network observer that have been compared to domain-level results conducted by the department's third-party contractors, if more than 20 percent of the domain-level results are different by more than one point for the community network observer, that observer and lead agency shall be issued a notice in writing by the state regarding their level of accuracy.

b. Within each observation period, for observations conducted by a community network observer that have been compared to domain-level results conducted by the department's third-party contractors, if more than 33 percent of the domain-level results are different by more than one point for the community network observer, that observer

shall be shadow scored by another community network observer in the next observation period.

c. Within each observation period, for observations conducted by a community network observer that have been compared to domain-level results conducted by the department's third-party contractors, if 50 percent or more of the domain-level results are different by more than one point for the community network observer, the department may determine that the community network observer shall not be able to conduct observations for that community network for the next observation period.

i. If the observer is no longer able to conduct observations for the community network, the department shall notify the observer and the lead agency that the observer shall not be able to conduct observations for that community network for the next observation period.

ii. A lead agency or community network observer may request in writing that the department review its decision in Subparagraph 5.c of this Subsection within 15 calendar days of receiving the decision.

iii. All requests for departmental review shall clearly state the specific reasons for requesting the review and the action being sought, and shall include all necessary supporting documentation.

iv. The department shall respond to the request for departmental review within 30 calendar days after receiving it.

v. The department may waive the action in Subparagraph 5.c of this Subsection in cases of extenuating circumstances or if the action would result in no other assessor being available to conduct required observations.

d. Observers who are receive notification from the department under Clause 5.c.i of this Subsection must meet the reliability requirements of 80 percent accuracy through annual recertification prior to being permitted to complete observations for the community network.

C. Coordinated Observation Plan

1. Each community network shall develop and maintain, no later than September 30 of each year, a written annual plan for coordinated observation using *CLASS*[®] that at a minimum includes:

a. - d.ii. ...

iii. the community network conducts inter-rater reliability observation checks for 10 percent of all classrooms observed during the fall observation period and for 10 percent of all classrooms observed during the spring observation period, and that these reliability observation checks include every observer for the community network at least once annually; and

C.1.d.iv. - D.3. ...

E. The department shall publicly release the reliability requirements for third-party contractors hired by the department annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2586 (December 2015), amended LR 42:

§509. Performance Rating Calculations for Publicly-Funded Sites

A. The performance rating for each publicly-funded site shall be based on the average of the dimension-level toddler and PreK observation results from the fall and spring

observation periods for all toddler and PreK classrooms within the site, excluding the negative climate dimension.

1. BESE may include a weight for improvement beginning with the 2016-2017 school year.

2. Sites that have classrooms that receive a score of 3.5 or above for the negative climate dimension shall receive a notice in writing at the end of the observation period in which they received that score. If a site receives a notice for two consecutive observation periods, an indicator of high negative climate may be reported on the performance profile.

B. Any classroom in a publicly-funded site that does not have the observations required in LAC 28:XCI.503 or does not have all results reported, shall have third-party scores for that classroom reported when available. If no third-party scores are available for that classroom, but there are observation scores for comparable classrooms within the site as required in LAC 28:XCI.503, the department shall assign the average domain score for the comparable classrooms to each missing *CLASS*[®] score. The department may assign a score of 1 to each missing *CLASS*[®] domain score if no comparable local or third-party scores are available. If this occurs, the score of 1 for missing or not-reported observation results shall be included in the performance rating calculation for that site. In these circumstances, the number of missing or not-reported observation results shall be reported on the performance profile.

B.1. - C.2. ...

a. For the 2015-2016 learning year, if the observation results conducted by community networks are consistently different by more than one point from observation results conducted by the department's third-party contractors, the department may replace all of the community network's observation results for a publicly-funded site with the results from the department's third-party contractors, including those results that do not differ by at least one point.

b. Beginning with the 2016-2017 school year, if observation results conducted by community networks are consistently different by more than one point from observation results conducted by the department's third-party contractors, the department may replace all of the community network's observation results for a publicly-funded site with the results from the department's third-party contractors, including those results that do not differ by at least one point.

D. The performance rating for each site shall be based on the following numerical scale:

1. 6.0-7.0—excellent;
2. 4.50-5.99—proficient;
3. 3.0-4.49—approaching proficient;
4. 1.0-2.99—unsatisfactory.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2587 (December 2015), amended LR 42:

§511. Performance Rating Calculations for Community Networks

A. Community networks shall receive two performance ratings which shall be calculated as follows.

1. CLASS® observation results shall be one of the community network performance ratings.

2. An equitable access score for four-year-olds shall be one of the community network performance ratings.

3. BESE may include a weight for improvement on equitable access beginning with the 2017-2018 school year.

B. The CLASS® observation results shall be determined by averaging the results of all fall and spring dimension-level toddler and PreK observation results for all toddler and PreK classrooms within the community network excluding negative climate.

1. Any classroom in a site that does not have the observations required in LAC 28:XCI.503, or has not had all observation results reported, shall have third-party scores for that classroom reported when available. If no third-party scores are available for that classroom, but there are observation scores for comparable classrooms within that site as required in LAC 28:XCI.503, the department shall assign the average domain score for the comparable classrooms to each missing CLASS® domain score. The department may assign a score of 1 to each missing CLASS® domain score if no comparable local or third-party score is available. If this occurs, the score of 1 for missing observation or not-reported results shall be included in the performance rating calculation for the community network. In these circumstances the number of missing or not-reported observation results shall be reported on the community network’s performance profile.

1.a. - 2.b.i. ...

ii. For every year after the 2015-2016 school year, if the observation results conducted by a community network are consistently different by more than one point from observation results conducted by the department’s third-party contractor, the department may replace all of the community network’s observation results for a publicly-funded site with the results from the department’s third-party contractor for that site, including those results that do not differ by at least one point.

C. The equitable access score performance rating shall be determined by calculating the access achieved by the community network for all at-risk four-year-old children in the community network coverage area. Points are earned on a four-level rating scale according to: ←Should this say “the following”.

Percentage of At-Risk Four-Year-Olds Served	Rating
90-100 percent	Excellent
80-89.99 percent	Proficient
70-79.99 percent	Approaching Proficient
0-69.99 percent	Unsatisfactory

D. The CLASS® observation results performance rating for each community network shall be based on the following numerical scale:

1. 6.0-7.0—excellent;
2. 4.5-5.99—proficient;
3. 3.0-4.49—approaching proficient;
4. 1.0-2.99—unsatisfactory.

E. - G. ...

H. Prior to the start of the 2017-2018 school year, a workgroup of Early Childhood Care and Education Advisory Council members shall be formed to study the inclusion of

additional metrics in the performance rating calculations and review R.S. 17:407.21 et seq., for potential statutory changes, and shall make recommendations regarding the use of any additional performance rating calculation metrics in LAC 28:XCI.509.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2588 (December 2015), amended LR 42:

§512. Performance Ratings for Publicly-Funded Sites

A. Unsatisfactory Publicly-Funded Sites

1. Beginning with the 2016-2017 school year, publicly-funded sites rated as “unsatisfactory,” as defined in LAC 28:XCI.509, for two school years in any consecutive three school year period, shall lose their public funding and have their academic approval terminated.

2. The state superintendent may grant exception to Subsection A of this Section if the publicly-funded site serves a special population, or if taking the required action in Subsection A of this Section would create an extraordinary burden for families or place children at risk of harm.

3. The department shall conduct an annual needs analysis for families in regions that may be impacted by publicly-funded sites losing their public funding to support access to early childhood programs.

B. Rewards and Recognition

1. Beginning in the 2016-2017 school year, sites and community networks that are rated “excellent” shall be included in an annual honor roll published by the department and be eligible for financial rewards, as funds are available and as determined by the department.

2. No later than the 2017-2018 school year, sites and community networks that demonstrate significant improvement in their overall score or rating shall be labeled “top gains” on their performance profile and be eligible for financial rewards, as funds are available and as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:

§513. Informational Metrics of Best Practices

A. Informational metrics are measures of a publicly-funded site and a community network’s use of the following early childhood care and education best practices. The performance profile shall report the publicly-funded site and community network’s use of the best practices identified as investment in quality measures, which shall include, but is not limited to:

1. teacher/child ratios. Publicly-funded sites maintain teacher/child ratios based on the age of children that are at or better than the minimum standards required in BESE *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*:

a. to achieve gold-level ratios, publicly-funded sites use the following teacher/child ratios and group sizes;

Age	Teacher/Child Ratio	Maximum Group Size
Birth to 1 year	1:4	8
1 year to 2 years	1:4	8
2 years to 3 years	1:6	12
3 years to 4 years	1:8	16
4 years to 5 years	1:10	20

b. to achieve silver-level ratios, publicly-funded sites use the following teacher/child ratios and group sizes;

Age	Teacher/Child Ratio	Maximum Group Size
Birth to 1 year	1:4	8
1 year to 2 years	1:6	12
2 years to 3 years	1:8	16
3 years to 4 years	1:10	20
4 years to 5 years	1:12	24

c. to achieve bronze-level ratios, publicly-funded sites use the minimum ratio standards required in BESE *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*;

2. teacher preparation. Publicly-funded sites ensure lead teachers meet or exceed credential requirements for publicly-funded classrooms provided in BESE *Bulletin 746—Louisiana Standards for State Certification of School Personnel*;

3. standards-based curriculum. Publicly-funded sites use a curriculum that is aligned to BESE *Bulletin 136—The Louisiana Standards for Early Childhood Care and Education Programs Serving Children Birth-Five Years*.

B. The performance profile may report informational metrics in the following categories:

1. child assessment that informs instruction;
2. investment in quality measures;
3. family engagement and supports; and
4. community network supports (reported at the community network level only):
 - a. the number of children served in new publicly-funded early childhood seats;
 - b. the percent of publicly-funded early childhood seats that are filled.

C. Each year and in collaboration with the Early Childhood Care and Education Advisory Council, the department shall review the results of the accountability system, including but not limited to the performance of programs on each domain of the CLASS[®], how the performance profile ratings are calculated, and the observer reliability substitution rates, and recommend any improvements for this bulletin. To develop these recommendations, the department shall work collaboratively with the Early Childhood Care and Education Advisory Council, which shall establish a workgroup for this purpose. The department, with assent shown by vote of the Advisory Council, can decide in a given year that no review is needed.

D. Contingent on available funding, the department shall conduct an external implementation evaluation of Louisiana’s early childhood care and education network to answer questions that include but are not limited to whether the system:

1. is based on performance ratings that are valid and reliable;
2. meaningfully differentiates between levels of program quality; and
3. delivers a robust set of quality improvement supports and incentives for improvement, as well as consequences for failure to improve. The results of the study shall be shared with the Early Childhood Care and Education Advisory Council and BESE.

E.1. The LDE is required to collect data designed to strengthen the state’s ability to track and monitor implementation of new and ongoing policies and supports, program quality, and child outcomes, positioning Louisiana to:

- a. provide targeted supports to teachers, programs, and schools; and
- b. be evaluation-ready when funds and evaluators become available.

2. The LDE shall explore critical data elements being collected by other states, seek recommendations from the Early Childhood Advisory Council on critical data elements and present a report on the findings to BESE no later than January 2017.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2588 (December 2015), amended LR 42:

§515. Reporting for the Accountability System

A. Lead agencies shall report to the department, in the manner specified by the department, the following:

1. classroom counts:
 - a. by October 1, the number of classrooms serving infant, toddler and PreK children in each publicly-funded site on October 1;
 - b. by February 1, the number of classrooms serving infant, toddler, and PreK children in each publicly-funded site on February 1; and
 - c. by February 1, the number of classrooms in the February 1 count that have been added or removed since the October 1 count;

A.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2589 (December 2015), amended LR 42:

§517. Data Verification

A. The department shall provide all non-survey data contributing to the performance profile for publicly-funded sites and community networks to each lead agency prior to publishing the performance rating.

B. In 2015-2016, the department shall provide lead agencies 30 calendar days for final review, correction, and verification of data for the performance profiles. For all subsequent years, the department shall provide lead agencies 10 calendar days for final review, correction, and verification of data for performance profiles.

1. The lead agency shall create and implement a community network data certification procedure that requires review of all performance profile data for each site during the data certification period.
2. The department may request the certification procedure from each lead agency.
3. Data corrections shall not be grounds for an appeal or waiver request as all data corrections shall be made prior to the release of profiles regardless of the source of any errors.
4. Data corrections may only be submitted for the following reasons:
 - a. CLASS[®] observations results have been reported incorrectly; or

b. CLASS® observation results were not reported.

5. The department shall review all data corrections and grant approval of those corrections that are proven valid.

6. The department may request additional documentation to support the validity of the changes.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2590 (December 2015), amended LR 42:

§521. Performance Profile Appeals Procedure

A. BESE shall have the authority to grant an appeal of a publicly-funded site or community network's performance profile.

B. The appeal procedure shall be used when needed to address unforeseen and aberrant factors impacting publicly-funded sites and community networks or when needed to address issues that arise when the literal application of the accountability system regulations does not consider certain unforeseen and unusual circumstances. Failure to complete observations or use of third-party scores are not sufficient reasons for requesting an appeal. Data corrections shall not be grounds for an appeal or waiver request as all data corrections shall be made prior to the release of profiles regardless of the source of any errors.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2590 (December 2015), amended LR 42:

Chapter 7. Coordinated Enrollment

§703. Coordinated Enrollment Process

A. - B.4. ...

C. In collaboration with representatives of providers of child care, Head Start, and prekindergarten services, the lead agency shall develop policies and procedures for how the requirements of Subsection B of this Section will be implemented. These policies and procedures shall be submitted to the department prior to initiation of the enrollment process, and shall include training for providers and parents on the eligibility criteria for different programs, the matching process for the network, and the complaint process for providers and parents as needed.

D. - F. ...

G. Request for Departmental Review

1. Any parent or caregiver may request that the department review the placement of his or her child resulting from the coordinated enrollment process.

2. A request for departmental review shall be submitted in writing to the department within 30 calendar days of placement of the child or of the event upon which the request for review is based.

3. All requests for departmental review shall clearly state the specific reasons for requesting the review and the action being sought, and shall include all necessary supporting documentation.

4. The department shall respond to the request for departmental review within 30 calendar days after receiving it.

5. Written notice of the process in outlined in Paragraph 2 of this Subsection, as well of the complaint

process described in LAC 28:XCI.311.A-F, and the appropriate contact information for the department, shall be made available to any parent or caregiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq., and R.S. 17:407.91 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2591 (December 2015), amended LR 42:

§705. Implementation Timeline

A. - D.

E. Prior to the start of the school year, BESE shall review this Chapter and revise as necessary based on learnings from the previous year. A work group of the Early Childhood Care and Education Advisory Council shall be formed to study the effectiveness of the coordinated enrollment process and make recommendations to the council and BESE for changes for implementation in the following school year. This research may include, but not be limited to, defining key indicators of effectiveness, conducting focus groups of all provider types, reviewing data on the placement of new early childhood seats opened statewide, and reviewing other available information. The department, with assent shown by vote of the Advisory Council, may decide in a given year that no review is needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq., and R.S. 17:407.91 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2592 (December 2015), amended LR 42:

§707. Demonstrated Progress toward Implementation

A. ...

B. The department may require community networks to complete an enrollment self-assessment each year. This self-assessment shall include, but is not limited to, the outcomes of the prior year's coordinated enrollment process, specifically how family choice resulted in these outcomes.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2592 (December 2015), amended LR 42:

§709. Community Network Request for Funding for Publicly-Funded Programs

A. By December 1 of each fiscal year, the lead agency shall develop, in collaboration with representatives of providers of child care, Head Start, and prekindergarten services, and submit a funding request for the following fiscal year to the department on behalf of the community network that is based on the coordinated enrollment results, which shall include the following:

1. the number of applications received for each age of at-risk children;

2. the number of seats requested at each publicly-funded site;

3. the number of seats recommended by the lead agency to receive funding with a prioritization by site and age of children served by funding source;

4. the criteria and process used to develop the community network request;

5. the recommended plan to maximize all funding sources to increase service to at-risk children;

6. the number of seats being requested in a mixed delivery setting; and

7. the number of eligible children served in the network by specific program type.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq., and R.S. 17:407.91 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2592 (December 2015), amended LR 42:

§713. Request for Departmental Review

A. Any publicly-funded program may request that the department review an enrollment decision or funding request of its lead agency or local enrollment coordinator. All programs shall be given written notice of the opportunity to request a departmental review of a lead agency or local enrollment coordinator's enrollment decision or funding request, as well as the complaint process described in LAC 28:XCI.311.A-F, and the appropriate contact information for the department.

B. A request for departmental review shall be submitted in writing to the department no later than 30 calendar days after the day on which community networks must submit funding requests to the department or the day in which the community network submitted the funding request to the department, whichever is later.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq., and R.S. 17:407.91 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2593 (December 2015), amended LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the

purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 140—Louisiana Early Childhood Care and Education Network**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions may result in an increase in expenditures by the Louisiana Department of Education (LDE), as well as for local school districts acting as the Community Network lead agency. Early childhood program activities are funded from multiple sources including federal Child Care and Development Funds (CCDF), federal IDEA funds, state general funds, as well as local funding and other available resources.

Bulletin 140 is a set of regulations focused specifically on Early Childhood Community Networks, which ensure one

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV.1103, 2307, 2318, 2907, 3309, and 3701)

organization within each local Community Network coordinates across programs, sets clear expectations for implementation of coordinated enrollment as required by Act 717 of the 2014 Regular Legislative Session, establishes processes to ensure fairness and equity for providers and families, and establishes a unified quality and improvement accountability system. The first year of policy implementation contained in Bulletin 140 was a learning year and the policy itself calls for revisions prior to the start of the 2016-2017 year. The proposed revisions reflect key shifts based on results from the 2015-2016 learning year, primarily associated with academic approval for Type III Early Learning Centers, and the accountability system, including coordinated observation plan requirements and performance rating calculations for publicly funded sites and Networks. Potential cost increases for the LDE are primarily associated with external evaluations of the performance rating system, program quality and improvement supports and/or sanctions. Additionally, the policy offers financial rewards to sites which receive certain ratings or demonstrate improvement in overall performance scores, subject to available funding. Furthermore, local school districts may incur increased costs associated with the additional observations necessary under the coordinated observation plan requirements as well as training required as part of the coordinated enrollment process.

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

The proposed changes could result in a loss of revenue for local school districts serving as the Community Network lead agency and/or operating publicly-funded sites if they should become ineligible to receive funding from LDE for early childhood care due to poor performance ratings. Those sites and networks which demonstrate significant improvement in their performance ratings, or achieve a rating of “Excellent”, may be eligible for financial rewards, subject to availability of funding for such incentives.

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

The proposed changes could result in a loss of funding for those early learning centers for which Academic Approval has been denied, terminated or not renewed as a result of a failure to comply with the annual program partner assurances, achieve satisfactory performance ratings, or otherwise violate the provisions of the bulletin. Under such circumstances, centers would be ineligible to receive funding for early childhood care from the LDE until such time the issues are rectified and the license has been reinstated. Furthermore, child care centers and individuals which are not licensed are not eligible to participate in the state’s School Readiness Tax Credit program. Conversely, sites and networks that demonstrate significant improvements in their overall performance rating and those rated “Excellent” may be eligible for financial rewards; to the extent funding is available.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1608#038

Evan Brasseaux
Staff Director
Legislative Fiscal Office

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education (BESE) approved for advertisement to revise Part CXV, *Bulletin 741—Louisiana Handbook for School Administrators*: §1103, Compulsory Attendance; §2307, Literacy Screening; §2318, The TOPS University Diploma; §2907, Connections Process; §3309, Curriculum; and §3701, Abbreviations/Acronyms. In March 2010, BESE approved a proposal submitted by the Louisiana Department of Education (LDE) that required all public schools with kindergarten through third grade enrollment to administer the *Dynamic Indicators of Basic Early Literacy Skills, 7th Edition (DIBELS Next)* as the approved kindergarten through third grade reading assessment.

In August 2013, BESE amended the March 2010 *DIBELS Next* requirement that all public schools with a kindergarten through third grade enrollment, or some variation thereof, administer the *DIBELS Next* reading assessment, to include a condition requiring *DIBELS Next*, unless the LDE approved an alternate reading assessment in lieu of *DIBELS Next* through a waiver, submitted by the local education agency (LEA).

The proposed revisions add to the list of accepted kindergarten through third grade literacy assessments, those alternate reading assessments that have been consistently requested by LEAs in waiver applications approved by BESE since 2013. The proposed revisions will reduce the number of waiver requests for kindergarten through third grade alternate reading assessments. The revisions also update the name of the high school equivalency assessment from the general educational development (GED) test to *HiSET*[®].

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1103. Compulsory Attendance

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

b. achieved a passing score on *HiSET*[®] exam; and

B.4.c. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112, R.S. 17:221.3-4, R.S. 17:226.1, and R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:641 (April 2009), LR 35:1097 (June 2009), LR 35:1475 (August 2009), LR 36:482 (March 2010), LR 36:1224 (June 2010), LR 37:1126 (April 2011), LR 37:2132 (July 2011), LR 38:1000 (April 2012), LR 38:1225 (May 2012),

LR 38:1399 (June, 2012), LR 39:2205 (August 2013), LR 41:372 (February 2015), LR 41:2594 (December 2015), LR 42:

Chapter 23. Curriculum and Instruction

Subchapter A. Standards and Curricula

§2307. Literacy Screening

A. Each LEA shall require that every child enrolled in kindergarten-third grade be given a BESE-approved literacy screening within the first 30 days of the school year. The results of this screening shall be used to plan instruction and provide appropriate and timely intervention. The results of the screening will also provide information required by R.S. 17:182, student reading skills; requirements; reports.

1. For students with significant hearing or visual impairment, nonverbal students, or students with significant cognitive impairment, the LEA shall provide an alternate assessment recommended by the LDE.

2. Each LEA shall report to the LDE screening results by child within the timeframes and according to the guidance established by the LDE.

3. For grades 1-3, the school should use the prior year's latest screening level to begin appropriate intervention until the new screening level is determined.

4. Screening should be used to guide instruction and intervention.

B. Each LEA may choose one of the following assessments for each grade level to meet kindergarten-third grade literacy screening requirements. LEAs must apply for a waiver to use an assessment not on the list.

Grade	Skill	BESE-Approved Literacy Screenings
Third Grade	Comprehension	(a) DIBELS Next Retell (Passage 1 only); or (b) iSTEEP Advanced Literacy; or (c) Fountas and Pinnell Comprehension; or (d) STAR Reading; or (e) STEP Comprehension; or (f) Scholastic Reading Inventory/Houghton Mifflin Harcourt Reading Inventory (SRI/HMH RI).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1289 (June 2005), amended LR 38:1224 (May 2012), LR 39:2214 (August 2013), LR 42:

§2318. The TOPS University Diploma

A. - C. ...

1. For incoming freshmen in 2008-2009 through 2013-2014 who are completing the Louisiana basic core curriculum, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in Course Requirements table found at <http://www.louisianabelieves.com/docs/default-source/jumpstart/course-substitutions.pdf>.

a. - h. ...

2. For incoming freshmen in 2008-2009 through 2013-2014 who are completing the Louisiana Core 4 curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in Course Requirements table found at <http://www.louisianabelieves.com/docs/default-source/jumpstart/course-substitutions.pdf>.

2.a. - 6.a.vi. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R.S. 17:183.2, and R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193 (November 2011), LR 38:754, 761 (March 2012), LR 38:1001 (April 2012), LR 38:1584 (July 2012), LR 40:994 (May 2014), LR 40:1328 (July 2014), LR 40:1679 (September 2014), LR 40:2525 (December 2014), LR 41:915 (May 2015), LR 41:1482 (August 2015), LR 41:2126 (October 2015), LR 42:232 (February 2016), LR 42:

Chapter 29. Alternative Schools and Programs

§2907. Connections Process

A. ...

B.1. LEAs may choose to implement the Connections Process which replaces Louisiana's PreGED/Skills Option Program. Connections is a one-year process for overage

Grade	Skill	BESE-Approved Literacy Screenings
Kindergarten	Phonological Awareness	(a) Dynamic Indicators of Basic Early Literacy Skills (DIBELS) Next First Sound Fluency; or (b) System to Enhance Educational Performance (iSTEEP) Initial Sound Fluency; or (c) Fountas and Pinnell Initial Sounds; or (d) Strategic Teaching and Evaluation of Progress (STEP) Phonemic Awareness First Sounds.
First Grade	Phonics	(a) DIBELS Next Nonsense Word Fluency-CLS; or (b) iSTEEP Nonsense Word Fluency; or (c) Easy Curriculum Based Measures (easyCBM) Word Reading Fluency; or (d) Fountas and Pinnell Phonograms; or (e) STEP Reading Record; or (f) Test of Word Reading Efficiency (TOWRE); or (g) Word Reading Efficiency Test (WRET).
Second Grade	Oral Reading Fluency	(a) DIBELS Next Oral Reading; or (b) iSTEEP Oral Reading Fluency; or (c) Fountas and Pinnell Oral Reading Rate; or (d) STEP Reading Rate/Fluency.

students to receive targeted instruction and accelerated remediation aimed at attaining a high school diploma, high school equivalency diploma (by passage of tests *HiSET*[®] exams), or state-approved skills certificate. The process includes a connections profile to track the following elements:

B.1.a. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 34:2032 (October 2008), LR 37:2131 (July 2011), LR 38:1000 (April 2012), LR 38:3133 (December 2012), LR 39:2226 (August 2013), LR 42:

Chapter 33. Home Study Programs

§3309. Curriculum

A. - A.4. ...

B. In order to receive a Louisiana State equivalency diploma, the student must pass the *HiSET*[®] exam. Completion of a home study program does not entitle the student to a regular high school diploma.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1312 (June 2005), amended LR 37:1137 (April 2011), LR 39:2229 (August 2013), LR 42:

Chapter 37. Glossary

§3701. Abbreviations/Acronyms

ADA—Americans with Disabilities Act.

AP—advanced placement.

BESE—Board of Elementary and Secondary Education.

CPR—cardiopulmonary resuscitation.

CTE—career/technical education.

CTSO—career and technical student organizations.

CTTIE—career and technical trade and industrial education.

DECA—An association of marketing students.

FBLA—Future Business Leaders of America.

FCCLA—Family, Career, and Community Leaders of America.

FFA—National FFA Organization.

GEE 21—Graduation Exit Examination for the 21st Century.

GLEs—grade-level expectations.

HOSA—Health Occupations Students of America.

IAP—individualized accommodation program.

IB—international baccalaureate.

IBC—industry-based certification.

IDEA—Individuals with Disabilities Education Act; the special education law.

IEP—individualized education program.

JROTC—Junior Reserve Officer Training Corps.

LDE—Louisiana Department of Education.

LEA—local education agency.

LEAP 21—Louisiana Educational Assessment Program for the 21st Century.

LHSAA—Louisiana High School Athletic Association.

LMA—Louisiana Montessori Association.

MFP—Minimum Foundation Program.

MPS—minimum proficiency standards.

NAEP—national assessment of educational progress.

NCLB—No Child Left Behind.

OFAT—out-of-field authority to teach.

SAE—supervised agriculture experience.

SAPE—substance abuse prevention education.

TAT—temporary authority to teach.

TOPS—Taylor Opportunity Program for Students.

TSA—Technology Student Organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1316 (June 2005), amended LR 39:2230 (August 2013), LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word “poverty” means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety,

environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions will have no effect on costs or savings to state or local governmental units.

In March 2010, the State Board of Elementary and Secondary Education (BESE) approved a proposal submitted by the Louisiana Department of Education (LDE) that required all public schools with kindergarten through third grade enrollment to administer the *Dynamic Indicators of Basic Early Literacy Skills, 7th Edition (DIBELS Next)* as the approved kindergarten through third grade reading assessment.

In August 2013, BESE amended the March 2010 *DIBELS Next* requirement that all public schools with a kindergarten through third grade enrollment, or some variation thereof, administer the *DIBELS Next* reading assessment, to include a condition requiring *DIBELS Next*, unless the LDE approved an alternate reading assessment in lieu of *DIBELS Next* through a waiver, submitted by the local education agency (LEA).

The proposed revisions add to the list of accepted kindergarten through third grade literacy assessments, those alternate reading assessments that have been consistently requested by LEAs in waiver applications approved by BESE since 2013. The proposed revisions will reduce the number of waiver requests for kindergarten through third grade alternate reading assessments.

The revisions also update the name of the high school equivalency assessment from the General Educational Development (GED) test to *HiSET*[®].

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

This policy change will have no effect on revenue collections of state or local governmental units.

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

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1608#030

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State
Certification of School Personnel (LAC 28:CXXXI.417)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement to revise *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §417, Educational Leader in Special Education Ancillary Certificate*. Act 130 of the 2016 Regular Legislative Session establishes an Educational Leader in Special Education certificate. This certificate authorizes the holder to serve as a supervisor, director, or coordinator of special education. It also enables educators who do not hold a standard teaching certificate but who do hold a valid Louisiana ancillary certificate in a special education-related field to obtain a leadership certificate specific to special education leadership roles. Additionally, the applicant must have three years of work experience in his/her area of certification, 240 documented hours of leadership experience, a graduate degree from a regionally accredited institution, and a passing score on the requisite educational leader exam. The proposed revisions align policy with Act 130 of the 2016 Regular Legislative Session.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 4. Ancillary School Service Certificates

Subchapter A. General Ancillary School Certificates

§417. Educational Leader in Special Education

Ancillary Certificate

A. The educational leader in special education ancillary certificate authorizes an individual to serve as a supervisor, director, or coordinator of special education in a school or district setting.

B. Issuance—this certificate is issued upon the request of the Louisiana employing authority.

C. Renewal Guidelines—this certificate is valid for a period of five years and may be renewed thereafter at the request of the Louisiana employing authority. Candidates must successfully meet the standards of effectiveness for at least three years during the five-year renewal period pursuant to Bulletin 130 and R.S. 17:3902. Such renewal shall constitute a renewal of the special education ancillary certificate only and shall not qualify the candidate for the educational leader certificate level 1 (ELC 1), educational leader certificate level 2 (ELC 2), or educational leader certificate level 3.

D. The candidate must:

1. hold one of the below valid Louisiana ancillary certificates:
 - a. assessment teacher;
 - b. educational consultant;
 - c. educational diagnostician;
 - d. certified school psychologist (level B or level A);
 - e. qualified speech pathologist;
 - f. speech therapist;
 - g. speech-language pathologist;
 - h. speech and hearing therapist;
 - i. qualified school social worker; or
 - j. qualified licensed audiologist;
2. have at least three years of experience working with students in the area of certification;
3. have completed a graduate degree program from a regionally-accredited institution of postsecondary education;
4. provide documented evidence of leadership experiences (240 clock hours or more) at the school; or
5. have a passing score on the school leaders licensure assessment (SLLA) or other equivalent assessment as determined by the state board through its rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, R.S. 17:411, and R.S. 17:429.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions will have no effect on costs or savings to the state. The impact of an increase in the number of certified professionals eligible for special education leadership roles to local school districts is indeterminable.

Act 130 of the 2016 Regular Legislative Session establishes an Educational Leader in Special Education certificate. This certificate authorizes the holder to serve as a supervisor, director, or coordinator of special education. It also enables educators who do not hold a standard teaching certificate but who do hold a valid Louisiana ancillary certificate in a special education-related field to obtain a leadership certificate specific to special education leadership roles. Additionally, the applicant must have three years of work experience in his/her area of certification, 240 documented hours of leadership

experience, a graduate degree from a regionally accredited institution, and a passing score on the requisite educational leader exam. The proposed revisions align policy with Act 130 of the 2016 Regular Legislative Session.

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

This policy change will have no effect on revenue collections of state or local governmental units.

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

The proposed change adds an additional certification category for professionals who meet the specified criteria to be eligible for leadership roles in special education, which could result in increased job opportunities and/or higher salary expectations for those affected individuals. However, school districts would not be obligated to increase salary ranges, as that is a local decision.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed change could increase the number of eligible individuals who qualify to serve as administrators in leadership positions in the field of special education.

Beth Scioneaux
Deputy Superintendent
1608#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1922—Compliance Monitoring Procedures (LAC 28:XCI.Chapters 1-3)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the revision of *Bulletin 1922—Compliance Monitoring Procedures*: §101, Monitoring; §105, Local Educational Agencies (LEAs); §107, Corrective Action and Sanctions; §109, Components of the Continuous Improvement Monitoring Process; §301, Categories of Monitoring; §303, Timelines; §305, On-Site Visits; §307, Regulatory Issues Reviewed On-Site; §311, Activities Conducted During the On-Site Visit; and §313, Activities/Procedures at the Completion of the On-Site Visit. Bulletin 1922 outlines the processes for special education monitoring in Louisiana. The proposed revisions align state policy with data privacy statutes, place local education agencies (LEAs) in tiered categories for monitoring selection (low, moderate, and high-risk); add types 1B and 3B charter schools to list of LEAs subject to monitoring; add LEA determinations to list strategies and components that may be utilized during the monitoring process; and allow on-site visits to be conducted by state-authorized individuals with training and experience in the program areas that are being monitored.

Title 28 EDUCATION

Part XCI. Bulletin 1922—Compliance Monitoring Procedures

Chapter 1. Overview

§101. Monitoring

A. - B. ...

C. The quantitative data will be used to determine specific performance profiles for local educational agencies (LEAs) using data relative to a set of variables referenced in 101B. Performance profiles will be issued annually. The quantitative data will be collected in relation to a set of variables selected by a statewide group of stakeholders from various agencies and entities. This group will meet at least annually with the Louisiana Department of Education (LDE) to select only specific indicators that will be used to determine an LEA's performance status. Any changes to the process shall be presented to the Special Education Advisory Panel.

D. LEAs will be placed in tiered categories for monitoring selection. The three tiers of monitoring are low, moderate, and high-risk. Upon validation of quantitative data, LEAs will be notified of their performance status and monitoring event.

1. LEAs designated as high-risk will receive an on-site compliance monitoring visit in order to review qualitative data specific to selected qualitative indicators that focus on the LEA's lowest performing indicator areas. Additional data may be reviewed prior to and during the on-site visit.

2. The LEAs designated as continuous improvement or have a ranking of low or moderate-risk will not be targeted to receive an on-site compliance visit. Some districts may be required to develop a corrective action plan because of triggers within the data that signify concerns such as when the performance of students with disabilities is disproportionately below the state average in any of the required performance indicators. These performance indicators include, but are not limited to suspension, diploma, dropout, and state-wide assessment rates.

D.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30.414 (March 2004), amended LR 31:3104 (December 2005), LR 37:3216 (November 2011), LR 42:

§105. Local Educational Agencies (LEAs)

A. Local educational agencies (LEAs) to be monitored are:

1. city or parish school systems;
2. special school district;
3. state Board of Elementary and Secondary Education special schools;
4. type 1B, 2, 3B (if acting as their own LEA) and 5 charter schools; and
5. university laboratory schools not under the administration of a school district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), amended LR 31:3105 (December 2005), LR 42:

§107. Corrective Action and Sanctions

A. ...

B. The LDE is authorized to take actions, consistent with applicable law, necessary to ensure compliance. Failure on the part of a participating agency to comply may result in the LDE, with the approval of its governing authority, the Board of Elementary and Secondary Education (BESE),

withholding funds from the said agency. Prior to withholding any funds under this Section, the LDE shall provide reasonable notice and an opportunity for a hearing conducted by the BESE to the LEA involved.

C. LDE determines the need for a corrective action plan (CAP) to address findings of non-compliance on an individual LEA case-by-case basis. If the LDE requires a CAP, it will be developed in collaboration with the LDE following the LEA's receipt of the LDE's monitoring report. The CAP shall be submitted for approval to the LDE within 35 business days of receipt of the monitoring report. However, upon receipt of the report, the LEA shall immediately begin correcting the findings of non-compliance documented in the report. The plan will address the activities the LEA will implement to correct the areas of non-compliance identified during the on-site visit as soon as possible, but in no case more than one year from the date of the notification report from the LDE.

D. - E. ...

F. When continuing non-compliance is identified, the LDE will require that an intensive corrective action plan (ICAP) be developed by the LEA in collaboration with the LDE, to address the continuing noncompliance. In conjunction with the implementation of the approved plan, the LDE will impose one or more of the following sanctions described below:

1. - 2. ...

3. direct the LEA to use IDEA part B flow-through funds on the area or areas that the LEA is non-compliant. The LEA will submit evidence to the LDE of the specific funds targeted for areas of non-compliance. The LDE will monitor the expenditure of such funds on a consistent basis;

4. ...

5. identify the LEA as a high-risk grantee and impose special conditions on the LEA's IDEA part B grant. The LDE will impose one or more of the following special conditions:

a. for each year of continuing non-compliance, withhold not less than 20 percent and not more than 50 percent of the LEA's IDEA part B grant until the LDE determines the LEA has sufficiently addressed the areas in which the LEA needs intervention;

b. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), amended LR 31:3105 (December 2005), LR 32:1839 (October 2006), LR 37:3216 (November 2011), LR 42:

§109. Components of the Continuous Improvement Monitoring Process

A. - B.5. ...

6. analyze FAPE tables and other mandated federal data reporting (i.e., e.g. personnel tables, child count data, LEA determinations);

7. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 32:1840 (October 2006), LR 37:3217 (November 2011), LR 42:

Chapter 3. Operational Procedures for Compliance Monitoring

§301. Categories of Monitoring

A. All LEAs are placed in performance profile categories on an annual basis. The performance profile is based upon an analysis of quantitative data collected by the LDE.

B. Monitoring will focus on the variables selected annually as risk indicators. LEAs will be ranked into tiered categories for purposes of monitoring selection. On-site visits will be determined based on a variety of compliance and performance measures. LEAs designated as high-risk will be subject to on-site compliance visits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:3217 (November 2011), LR 42:

§303. Timelines

A. A schedule of LEAs selected for monitoring will be issued to LEAs by September of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:3217 (November 2011), LR 42:

§305. On-Site Visits

A. On-site visits will be conducted by individuals authorized by the state with training and experience in the program areas that they will be monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:3218 (November 2011), LR 42:

§307. Regulatory Issues Reviewed On-Site

A. For high-risk LEAs, the regulatory issues, qualitative and quantitative indicators reviewed will be specific to the variables targeted in the LEA's performance profile. These visits will focus on selected issues. In the event that other critical issues or triggers are identified by means other than the performance profiles, the LDE will direct the team to monitor those issues for non-compliance. These other means may include, but are not limited to, complaint logs, evaluation extension requests, and financial risk assessments.

B. - C.13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011), LR 42:

§311. Activities Conducted During the On-Site Visit

A. ...

B. Individuals authorized by the state will conduct a parent focus group meeting and interview parents to collect data/information on their satisfaction of the services provided to their children and their involvement in their children's program.

C. LDE team members will visit sites, make observations, review records, and interview personnel.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011), LR 42:

§313. Activities/Procedures at the Completion of the On-Site Visit

A. At the completion of the on-site visit, the team will meet to discuss, review, and analyze the team findings and to summarize their findings on LDE-issued forms. An LDE team member will meet with representatives of the LEA at the conclusion of the on-site visit.

B. - D. ...

E. The LEA, in collaboration with the LDE, will be required to design a corrective action plan that defines specific supports and resources that the LEA must have in order to implement the corrective action plan. The CAP must demonstrate how the LEA will:

1. correct each individual case of noncompliance; and
2. correctly implement the specific regulatory requirement.

F. - G. ...

H. If there is no responses from the LEA within the established timelines, the LDE may implement any of the corrective actions or sanctions as described in Section 107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011), LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable

provisions of the law relating to public records. For the purposes of this section, the word “poverty” means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1922—Compliance Monitoring Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions may result in an increase in expenditures of the Department of Education; however, the extent of such increases is indeterminable at this time. Monitoring activities are funded with federal IDEA funds.

Bulletin 1922 outlines the processes for special education monitoring in Louisiana. The proposed revisions, place local education agencies (LEAs) in tiered categories for monitoring selection - low, moderate, and high risk and add Types 1B and 3B charter schools to the list of LEAs subject to monitoring. These changes are expected to increase the number of required on-site visits, as well as change the type of monitoring for the

new categories, which may increase monitoring costs. The changes add LEA determinations to the list of strategies and components that may be utilized during the monitoring selection process. Finally, in light of state privacy laws, parents will no longer be eligible to serve on the teams that conduct monitoring activities involving student information. These activities may only be conducted by state-authorized individuals with training and experience in the program areas that are being monitored. However, there is no anticipated impact as this has been the department's practice since July 2015.

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

This policy change will have no effect on revenue collections of state or local governmental units.

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

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1608#031

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Division**

**Emission Reduction Credits (ERC) from
Mobile Sources (LAC 33:III.Chapter 6)(AQ365)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.603, 605, 606, 607, 611, 617 and 619 (AQ365).

LAC 33:III.Chapter 6 currently limits participation in the Emission Reduction Credit (ERC) Banking Program to stationary point sources. "Stationary point source" is defined as "any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act." Stationary point sources include fugitive emissions, but exclude mobile sources such as cars, trucks, motorcycles, marine vessels, locomotives, and nonroad engines. This rulemaking will allow creditable (i.e., surplus, permanent, quantifiable, and enforceable) reductions from certain mobile sources to qualify as ERC.

This rulemaking will also clarify that minor sources eligible to participate in the ERC Banking Program must have been operating under an air permit and subject to the emissions inventory reporting requirements of LAC 33:III.919 during the baseline period. On October 1, 2015, the Environmental Protection Agency (EPA) lowered the 8-hour national ambient air quality standard (NAAQS) for ozone to 0.070 parts per million (i.e., 70 parts per billion). EPA will designate areas as attainment, nonattainment, or unclassifiable with respect to the new standard in late 2017 based on 2014-2016 air quality data.

Based on current design values (2013 through 2015), Baton Rouge would be designated as a marginal nonattainment area. In addition, New Orleans has a design value of 70 ppb and could potentially fall out of compliance with the new standard before designations are made.

In order to encourage broad reductions in NO_x and VOC emissions that will be needed to comply with the revised ozone NAAQS, LDEQ will amend Chapter 6 to allow creditable reductions from certain mobile sources to qualify as ERC and therefore be used as offsets under the nonattainment new source review (NNSR) program, LAC 33:III.504.

In order to construct a new major stationary source or major modification in an ozone nonattainment area, federal and state regulations require the owner or operator to offset significant increases in NO_x and VOC emissions resulting from the new source or modification. If the necessary offsets cannot be secured, a permit for the project cannot be issued. Therefore, expanding the source types from which ERC can be generated may also serve to facilitate economic growth. The basis and rationale for this Rule are to allow creditable NO_x and VOC reductions from certain mobile sources to qualify as ERC and therefore be used as offsets for NNSR purposes. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 6. Regulations on Control of Emissions
through the Use of Emission Reduction
Credits (ERC) Banking**

§603. Applicability

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in nonattainment areas may submit ERC applications for purposes of banking, provided the source was operating under an air permit and subject to the emissions inventory reporting requirements of LAC 33:III.919 during the baseline period. Sources located in EPA-designated attainment areas may not participate in the emissions banking program, except as specified in Subsection C of this Section.

B. - C. ...

D. Eligible Sources. Sources for which emission reduction credits may be created and banked include the following source types:

1. stationary point sources;
2. on-road mobile sources, including cars, trucks, and motorcycles;
3. marine vessels;
4. locomotives; and
5. *nonroad engines* as defined in LAC 33:III.502.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended

by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 41:2320 (November 2015), LR 42:

§605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

* * *

Allowable Emissions—the emissions rate of a stationary point source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, hours of operations, or both) and the most stringent of the following:

- a. an applicable standard set forth in 40 CFR part 60, 61, or 63;
- b. any applicable state implementation plan (SIP) emission limitation, including those with a future compliance date;
- c. applicable emission limitations specified as an enforceable permit condition, including best available control technology (BACT) and lowest achievable emission rate (LAER) requirements, including those with a future compliance date;
- d. applicable acid rain SO₂ and NO_x control requirements as defined under title IV of the 1990 Clean Air Act amendments and subsequent regulations; or
- e. any other applicable emission limitation or standard promulgated by the administrator.

* * *

Baseline Emissions—the level of emissions during the baseline period, as calculated in accordance with LAC 33:III.607. A.3, that occur prior to an emission reduction, considering all limitations required by applicable federal and state regulations, below which any additional reductions may be credited for use as offsets.

Baseline Period—the period of time over which the historical emissions of a source are averaged. In general, this period shall be a two-year period that precedes the date of the emission change and that is representative of normal source operation. A different time period shall be allowed upon a determination by the department that it is more representative of normal source operation.

Emission Reductions—the decreases in emissions associated with a physical change or change in the method of operation at, or attributed to, an eligible source.

* * *

Offset—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing eligible source, which is used to compensate for a significant net increase in emissions from a new or modified stationary source in accordance with the requirements of LAC 33:III.504. To be valid, an offset must meet the definition of ERC.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary,

Legal Affairs Division, LR 33:2068 (October 2007), LR 34:1890 (September 2008), LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:

§606. Creation of Emission Reduction Credits

A. Acceptable Methods of Creation. Methods of reducing emissions to receive credit under this Chapter include, but are not limited to, the following:

1. installation of add-on control equipment;
2. change in process(es);
3. change in process inputs, formulations, products or product mix, or raw materials (an actual emission reduction resulting from more effective operation and maintenance of abatement and process equipment if the applicant accepts a permit provision specifying a lower level of emission);
4. shutdown of emission units or stationary sources;
5. production curtailment(s); and
6. reductions in operating hours; and
7. other methods that may be appropriate for on-road mobile sources, marine vessels, locomotives, or nonroad engines as described in LAC 33:III.611.

B. Emission reductions shall be recognized as ERCs only after the approval of the department has been obtained. The department shall approve emission reductions as ERCs that are determined to be surplus, permanent, quantifiable, and enforceable, as defined in LAC 33:III.605.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

§607. Determination of Creditable Emission Reductions from Stationary Point Sources

A. Procedures for Calculating the Surplus Emission Reduction. The following procedures shall be used in calculating the quantity of surplus air emission reductions.

1. Calculate actual emissions during the baseline period.
2. Calculate adjusted allowable emissions during the baseline period. Allowable emissions shall be adjusted to account for all new or revised federal or state regulations adopted that will require, or would have required, all or a portion of the emission reductions that comprise the ERC application or ERC (in the case of a partial use of a previously approved ERC) at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.
3. Quantify Baseline Emissions. Baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph A.2 of this Section.
4. Calculate allowable emissions after the reductions occurred.
5. Calculate the surplus emission reduction by subtracting the allowable emissions after the reduction occurred from the baseline emissions.

B. Adjustments for Netting. Emission reductions used in a netting analysis (i.e., to determine the *net emissions increase* as defined in LAC 33:III.504 or 509, as appropriate) that prevented the increase from being considered “significant” are not eligible for use as offsets. The quantity of emission reductions utilized to “net out” shall not be considered creditable.

C. Emission reductions from stationary point sources may be creditable for use as offsets for up to 10 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:

§611. Determination of Creditable Emission Reductions from Mobile Sources

A. Eligibility

1. In order to be eligible for ERCs, the mobile source must be capable of being used or operated for its intended purpose and registered and insured by the owner, if required by applicable law.

2. Eligible emission reduction strategies include:

a. exhaust control technologies in which a pollution control device, such as an oxidation catalyst, is installed in an engine's exhaust system;

b. remanufacturing systems or kits, which entail the replacement of certain parts of an engine during a rebuild, resulting in reduced emissions;

c. EPA-verified idle reduction projects which involve the installation of a technology or device that reduces unnecessary idling of diesel-fired mobile sources and/or is designed to provide services (e.g., heat, air conditioning, and/or electricity) to such sources that would otherwise require the operation of the main or an auxiliary engine while the mobile source is temporarily parked or remains stationary;

d. engine repowers in which an existing engine is replaced with a newer engine certified to a more stringent set of emission standards, or otherwise powered with an alternative fuel;

e. vehicle or equipment replacements in which an entire vehicle or other eligible source type is replaced with a newer vehicle or similar source certified to a more stringent set of emission standards, or otherwise powered with an alternative fuel;

f. clean alternative fuel conversions in which a mobile source or engine is altered to operate on alternative fuels such as propane, natural gas, alcohol, or electricity. The conversion system must be certified by EPA in order to ensure that the project is exempt from the tampering prohibition in section 203(a) of the Clean Air Act.

B. Procedures for Calculating the Surplus Emission Reduction

1. Calculate Actual Emissions During the Baseline Period. The applicant shall demonstrate, to the satisfaction of the department, a reliable and accurate basis for calculating actual emissions. Such means may include, but are not limited to, EPA-approved emission modeling systems for mobile sources (e.g., MOVES) and EPA-approved test methods.

a. Actual emissions shall not be based on a rate which exceeds the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified, as applicable.

b. Actual emissions shall exclude any emissions realized when the mobile source was operating outside of the ozone nonattainment area during the baseline period.

c. The applicant shall provide sufficient documentation to substantiate the operational locations and utilization rate of the mobile source during the baseline period.

2. Calculate Projected Emissions. Projected emissions shall be based on the highest anticipated annual utilization of the modified or substitute mobile source after the emission reduction strategy has been put in place.

a. Projected emissions shall not be based on a utilization rate less than that realized by the mobile source during the year of the baseline period in which its utilization was higher.

b. Projected emissions shall not exclude periods during which the modified or substitute mobile source is anticipated to operate outside of the ozone nonattainment area.

3. The surplus emission reduction shall be calculated using the following equation:

$$\text{ERC} = \frac{(\text{Actual Emissions During the Baseline Period} - \text{Projected Emissions})}{1.2}$$

C. Permanent, Quantifiable, and Enforceable

1. The owner or operator shall operate and maintain the modified or substitute mobile source in accordance with the manufacturer's emission-related operation and maintenance instructions. Records of maintenance activities shall be retained at a location approved by the department and made available for inspection upon request.

2. A substitute mobile source shall be certified to meet applicable federal exhaust and evaporative emission standards. If no federal exhaust emission standards are applicable to the substitute mobile source, the testing requirements of Paragraph C.3 of this Section shall apply.

3. Testing. NO_x and VOC emissions from a modified mobile source shall be verified via EPA-approved test methods in accordance with a protocol approved by the department.

a. In the event the emission reduction strategy is applied to a large group of identical or functionally equivalent mobile sources, a subset of the modified or substitute mobile sources may be tested as approved by the department.

b. Testing shall not be required:

i. if the modified mobile source must be recertified with federal exhaust emission standards as a matter of federal law;

ii. if the owner or operator installs a diesel emission reduction technology verified by EPA or the California Air Resources Board (CARB), provided the percent reduction claimed is not in excess of that recognized by EPA or CARB;

iii. for a modified mobile source, which will be powered by a battery or fuel cell-powered electric motor; or

iv. for any pollutant for which ERCs are not being claimed.

4. If a mobile source is to be taken out of service as part of the emission reduction strategy, the mobile source (or engine associated with the mobile source) shall be rendered permanently inoperable.

a. Acceptable methods to render a mobile source (or engine associated with a mobile source) permanently inoperable include, but are not limited to:

i. scrapping the mobile source or engine using an automobile crusher licensed by the Louisiana Used Motor Vehicle Commission;

ii. making the engine unusable by drilling a hole through all of the cylinder bores on the engine block large enough to prevent its repair (i.e., 3 inches); or

iii. returning the engine to a remanufacturing facility either operated by the original engine manufacturer or authorized by the department. In this case, the remanufacturer of the engine must completely disassemble the engine components for recycling purposes, but may use the old block to build a remanufactured engine with a new serial number.

b. The applicant shall certify in writing and, if requested by the department, provide photographs that verify the mobile source (or engine associated with the mobile source) has been rendered permanently inoperable.

5. Locomotives. If a locomotive is to be taken out of service as part of the emission reduction strategy, the locomotive shall be rendered permanently inoperable as described in Paragraph C.4 of this Section. Alternatively, the department may allow the locomotive to be permanently removed from Louisiana provided the owner can demonstrate to the satisfaction of the department that the unit will not be returned to the state.

D. Prohibitions

1. Emission reductions from mobile sources funded through state or federal programs (e.g., the Diesel Emissions Reduction Act) shall not qualify as ERCs unless specifically allowed by that program.

2. Emission reductions from mobile sources shall not be considered creditable decreases for purposes of determining whether a physical change or change in the method of operation constitutes a *major modification* as defined in LAC 33:III.504 or 509.

E. Emission reductions from mobile sources may be creditable for use as offsets for up to 5 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

§617. Procedures for Review and Approval of ERCs

A. The department's review and approval of an application for ERCs generally shall be conducted when a request is submitted to use the reductions as offsets. The review shall be conducted in accordance with LAC 33:III.607 or 611, as applicable.

B. ...

C. ERC Certificates

1. ...

2. Upon issuance of a permit that relies upon the use of approved ERCs as offsets, the department shall be responsible for recalculating the ERC balance for that entity and for providing that entity with an adjusted ERC certificate. In the case of a partial use of an ERC from an emission reduction project, the department shall issue a new certificate reflecting the available credits remaining. If the ERCs were generated from a stationary point source, the remaining ERC(s) shall be reviewed again in accordance with LAC 33:III.607 at the time a request is received to use the remaining portion.

C.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:304 (February 2002), amended by the Office of the Secretary, Legal Division, LR 42:

§619. Emission Reduction Credit Bank

A. ...

B. ERC Certificates. Certificates shall be issued for approved ERCs. A record of each ERC certificate issued shall be retained by the department. Each ERC certificate shall, at minimum:

1. - 3. ...

4. state the name or description of the eligible source from which the emission reduction occurred;

B.5. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 28:305 (February 2002), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ365. Such comments must be received no later than October 5, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ365. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on September 28, 2016, at 1:30 p.m. in the Galvez Building, Natchez Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: **Emission Reduction
Credits (ERC) from Mobile Sources****

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule. The proposed rule change will permit creditable emissions reductions from certain mobile sources to qualify as an Emission Reduction Credit (ERC). The proposed rule also provides for participant eligibility.

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

The proposed rule may result in the submittal of additional applications to LDEQ. Per LAC 33:III.Chapter 2, the fee for emissions banking is \$66. Due to the voluntary nature of qualifying projects, LDEQ cannot anticipate the number of applications that may be received. Consequently, the increase in funds attributed to ERC application fees cannot be quantified. In any event, LDEQ does not anticipate that the proposed rule will result in any appreciable increase in revenue.

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

The proposed rule will allow creditable (i.e., surplus, permanent, quantifiable, and enforceable) reductions from certain mobile sources to qualify as ERC. Owners or operators of eligible sources may submit applications to bank such reductions. However, this action does not compel any entity to participate in the ERC banking program; it simply expands the source types from which ERC can be generated. Therefore, it will have no effect on costs, including workload adjustments or additional paperwork.

An owner or operator who has banked creditable reductions as ERC may benefit in two ways. First, the owner or operator could use the ERC to offset the emissions increases associated with a new major stationary source or major modification as required by the Nonattainment New Source Review (NNSR) Program, LAC 33:III.504. Second, the owner or operator could

sell the ERC to another source located (or proposing to locate) in the same nonattainment area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson
General Counsel
1608#047

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Division**

**Hazardous Waste Delisting—Excluded Wastes
Denka Performance Elastomer LLC
(LAC 33:V.4999)(HW121)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.4999.Appendix E (HW121).

This Rule is a name change for a hazardous waste delisting of dynawave scrubber effluent, which was approved and promulgated under DuPont/Dow Elastomer LLC on December 20, 1999. This Rule is to acknowledge an ownership change effective October 1, 2015 from former E.I. DuPont de Nemours and Co. Neoprene located in LaPlace, LA to Denka Performance Elastomer LLC. The basis and rationale for this action is a routine change in ownership of a facility generating the delisted waste. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—

Hazardous Waste

Chapter 49. Lists of Hazardous Wastes

Editor’s Note: Chapter 49 is divided into two Sections: category I hazardous wastes, which consist of hazardous wastes from nonspecific and specific sources (F and K wastes), acute hazardous wastes (P wastes), and toxic wastes (U wastes) (LAC 33:V.4901); and category II hazardous wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).

§4999. Appendices—Appendix A, B, C, D, E, and F

Appendix A. - Appendix D. ...

Appendix E—Wastes Excluded under LAC 33:V.105.M

A. - B.3.b. ...

Table 1—Wastes Excluded
BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA

Table 1—Wastes Excluded
Denka Performance Elastomer LLC, LaPlace, LA
Dynawave Scrubber Effluent is generated through the combustion of

Table 1—Wastes Excluded
Denka Performance Elastomer LLC, LaPlace, LA
<p>organic waste feed streams carrying the listed EPA Hazardous Waste Numbers F001, F002, F003, and F005. The specific hazardous waste streams being combusted and their EPA Hazardous Waste Numbers are: HCl Feed—D001, D002, and D007; Ponchartrain CD Heels—D001 and F005; Waste Organics—D001, D007, and F005; Catalyst Sludge Receiver (CSR) Sludge—D001, D007, and F005; Isom Purge—D001, D002, and F005; and Louisville CD Heels—D001, D007, D039, F001, F002, F003, and F005. Denka Performance Elastomer LLC must implement a sampling program that meets the following conditions for the exclusion to be valid.</p>
<p>(1). Testing Sample collections and analyses, including quality control (QC) procedures, must be performed according to methodologies described in <i>Test Methods for Evaluating Solid Waste, Physical/Chemical Methods</i>, EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.</p>
<p>(1)(A). Inorganic Testing During the first 12 months of this exclusion, Denka Performance Elastomer LLC must collect and analyze a monthly grab sample of the Dynawave Scrubber Effluent. Denka Performance Elastomer LLC must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for chromium, nickel, and zinc, including quality control information. If the department and Denka Performance Elastomer LLC concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Denka Performance Elastomer LLC may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p>
<p>(1)(B). Subsequent Inorganic Testing Following concurrence by the department, Denka Performance Elastomer LLC may substitute the following testing conditions for those in condition (1)(A). Denka Performance Elastomer LLC must continue to monitor operating conditions and analyze samples representative of each year of operation. The samples must be grab samples from a randomly chosen operating day during the same month of operation as the previous year's sampling event. These annual representative grab samples must be analyzed for chromium, nickel, and zinc. Denka Performance Elastomer LLC may, at its discretion, analyze any samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(1)(C). Organic Testing During the first 30 days of this exclusion, Denka Performance Elastomer LLC must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the organic constituents listed in condition (3)(B) below. After completing this initial sampling, Denka Performance Elastomer LLC shall sample and analyze for the organic constituents listed in condition (3)(B) on an annual basis.</p>
<p>(1)(D). Dioxins and Furans Testing During the first 30 days of this exclusion, Denka Performance Elastomer LLC must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the dioxins and furans in condition (3)(C) below. After completing this initial sampling, Denka Performance Elastomer LLC shall sample and analyze for the dioxins and furans in condition (3)(C) once every three years to commence three years after the initial sampling.</p>
<p>(2). Waste Holding and Handling Consequent to this exclusion, the Dynawave Scrubber Effluent becomes, on generation, nonhazardous solid waste and may be managed and disposed of on the Denka Performance Elastomer LLC plant site in any one of three permitted underground deep injection wells. With prior written authorization from the department, alternative disposal methods may be either a Louisiana Pollution Discharge Elimination System/National Pollution Discharge Elimination System (LPDES/NPDES) permitted outfall or a permitted commercial underground deep injection well. This newly delisted waste must always be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any representative sample equal or exceed any of the delisting levels set in condition (3), the Dynawave Scrubber Effluent must be immediately resampled and reanalyzed for the constituent(s) that exceeded the delisting levels. If the repeat analysis is less than the delisting levels, then Denka Performance Elastomer LLC shall resume the normal sampling and analysis schedule as described in condition (1). If the results of the reanalysis equal or exceed any of the delisting levels, then within 45 days Denka Performance Elastomer LLC shall submit a report to the department that outlines the probable causes</p>

Table 1—Wastes Excluded
Denka Performance Elastomer LLC, LaPlace, LA
<p>for exceeding the constituent level and recommends corrective action measures. The department shall determine the necessary corrective action and shall notify Denka Performance Elastomer LLC of the corrective action needed. DuPont Dow shall implement the corrective action and resume sampling and analysis for the constituent per the schedule in condition (1). Within 30 days after receiving written notification, Denka Performance Elastomer LLC may appeal the corrective action determined by the department. During the full period of corrective action determination and implementation, the exclusion of the Dynawave Scrubber Effluent shall remain in force unless the department notifies Denka Performance Elastomer LLC in writing of a temporary rescission of the exclusion. Normal sampling and analysis shall continue through this period as long as the exclusion remains in force.</p>
<p>(3). Delisting Levels The following delisting levels have been determined safe by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V. 4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p>
<p>(3)(A). Inorganic Constituents Chromium—2.0; Nickel—2.0; Zinc—200.</p>
<p>(3)(B). Organic Constituents Acetone—80; Chlorobenzene—2.0; Chloroform—0.2; Chloroprene—14; Ethylbenzene—14; Methylene Chloride—0.1; Styrene—2.0; Toluene—20; Xylenes—200.</p>
<p>(3)(C). Dioxins and Furans The 15 congeners listed in Section 1.1 of EPA Publication Number SW-846 Method 8290—Monitor only.</p>
<p>(4). Changes in Operating Conditions or Feed Streams If Denka Performance Elastomer LLC either significantly changes the operating conditions specified in the petition or adds any previously unspecified feed streams and either of these actions would justify a Class 3 modification to its combustion permit, Denka Performance Elastomer LLC must notify the department in writing. Following receipt of written acknowledgement by the department, Denka Performance Elastomer LLC must collect a grab sample and analyze it for the full universe of constituents found in 40 CFR Part 264, Appendix IX—Groundwater Monitoring List (LAC 33:V.3325). If the results of the Appendix IX analyses identify no new hazardous constituents, then Denka Performance Elastomer LLC must reinstitute the testing required in condition (1)(A) for a minimum of 12 monthly operating periods. During the full period described in this condition, the delisting of the Dynawave Scrubber Effluent shall remain in force unless a new hazardous constituent is identified or the waste volume exceeds 25,000 cubic yards per year; at this time the delisting petition shall be reopened. Denka Performance Elastomer LLC may eliminate feeding any stream to the combustion unit at any time without affecting the delisting of the Dynawave Scrubber Effluent or the sampling schedule.</p>

Table 1—Wastes Excluded
Lyondell Chemical Company, Lake Charles, LA

Table 1—Wastes Excluded
Marathon Oil Co., Garyville, LA

Table 1—Wastes Excluded
Motiva Enterprises LLC, Norco, LA

Table 1—Wastes Excluded
Syngenta Crop Protection, Inc., St. Gabriel, LA

Table 2—One-Time Wastes Excluded
Murphy Exploration and Production Company, Amelia, LA
* * *

Table 2—One-Time Wastes Excluded
Conrad Industries, Inc. (Conrad), Morgan City, LA
* * *

Appendix F—Recordkeeping Instructions

A. - B.3, Table 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:1021 (June 2008), LR 34:1613 (August 2008), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), LR 40:1692 (September 2014), LR 42:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW121. Such comments must be received no later than October 5, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW121. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on September 28, 2016, at 1:30 p.m. in the Galvez Building, Natchez Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Hazardous Waste Delisting
Excluded Wastes**

Denka Performance Elastomer LLC

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Denka Performance Elastomer, LLC. has petitioned the Louisiana Department of Environmental Quality to apply a name change to the existing conditional exclusion of the Dynawave Scrubber Effluent waste granted to DuPont Dow Elastomers on December 20, 1999. Denka purchased the process units from DuPont that generate these wastes. Denka has shown to the department's satisfaction that no change has been made to any of the processes that generate the waste; therefore, only a name change is involved. The conditions applying to this exclusion will continue in force. There will be no costs or savings to state or local governmental units for implementing this rule.

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

There is no estimated effect on revenue collections of state or local governmental units resulting from this proposed rule.

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

There are no estimated effects on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rules have no effect on completion and employment.

Herman Robinson
General Counsel
1608#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Division**

Operating Time of Emergency Engines
(LAC 33:III.311)(AQ366)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been

initiated to amend the Air regulations, LAC 33:III.311 (AQ366).

The regulatory permit for stationary internal combustion engines currently limits operating time of emergency engines to 500 hours per 12-consecutive month period at LAC 33:III.311.E.1. This Rule will revise the allowable operating time of emergency engines to be consistent with federal regulations (i.e., 40 CFR 60.4211(f) of subpart IIII, 40 CFR 60.4243(d) of subpart JJJJ, and 40 CFR 63.6640(f) of Subpart ZZZZ). Most stationary internal combustion engines are subject to one (and sometimes two) of the following federal standards:

- Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines;

- Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

- Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

These provisions restrict the operating time of emergency engines as follows:

- Emergency engines may be operated for maintenance checks and readiness testing for a maximum of 100 hours per calendar year, provided that the tests are recommended by federal, state, or local government; the manufacturer; the vendor; or the insurance company associated with the engine. The owner or operator may petition the department for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that federal, state, or local standards require maintenance and testing of emergency engine beyond 100 hours per calendar year.

- Emergency engines may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing.

- There is no time limit on the use of emergency engines in emergency situations. The basis and rationale for this rule are to revise the Regulatory Permit for Stationary Internal Combustion Engines to limit the operating time of emergency engines consisted with 40 CFR 60 Subpart IIII, 40 CFR 60 Subpart JJJJ, and 40 CFR 63 Subpart ZZZZ. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 3. Regulatory Permits

§311. Regulatory Permit for Stationary Internal Combustion Engines

A. - D.2. ...

E. Operating Time of Emergency Engines

1. Emergency engines may be operated for maintenance checks and readiness testing for a maximum of 100 hours per calendar year, provided that the tests are recommended by the federal, state, or local government;

manufacturer; vendor; or insurance company associated with the engine. The owner or operator may petition the department for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that federal, state, or local standards require maintenance and testing of emergency engines beyond 100 hours per calendar year.

2. Emergency engines may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing.

3. There is no time limit on the use of emergency engines in emergency situations.

4. Operating time of each emergency engine shall be monitored by any technically-sound means, except that a run-time meter shall be required for all permanent units.

5. Operating time of each emergency engine shall be recorded each month, as well as its operating time for the last 12 months. These records shall be kept on-site for five years and available for inspection by the Office of Environmental Compliance.

F. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), amended LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:780 (April 2014), LR 42:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ366. Such comments must be received no later than October 5, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ366. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on September 28, 2016, at 1:30 p.m. in the Galvez Building, Natchez Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are

allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Operating Time of Emergency Engines**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule. The proposed rule change will revise the Regulatory Permit for Stationary Internal Combustion Engines in order to make the annual operation time limit of emergency engines consistent with federal regulations.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule.

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

Owners or operators of emergency stationary internal combustion engines authorized by the Regulatory Permit for Stationary Internal Combustion Engines will be affected by the proposed rule. However, there will be no compliance-related cost, workload adjustment, or additional administrative obligation required to comply with the revised provisions of LAC 33:III.311. Provisions regarding the monitoring and recording of operating time are already in place.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson
General Counsel
1608#046

Evan Brousseau
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Architectural Examiners

Professional Architectural Corporations, Architectural-Engineering Corporations, and Limited Liability Companies (LAC 46:I.Chapter 17)

Notice is hereby given in accordance with the provisions of R.S. 49:950 et seq., and through the authority granted in R.S. 37:144(C), that the Board of Architectural Examiners proposes to amend LAC 46:I.Chapter 17 pertaining to its regulation of professional architectural corporations (LAC 46:I.1701), architectural-engineering corporations (LAC

46:I.1703), and limited liability companies (LAC 46:I.1705), and other architectural firms offering to practice or practicing architecture in Louisiana. The board presently regulates professional architectural corporations, architectural-engineering corporations, and limited liability companies only. During the 2012 legislative session, the legislature enacted Act 514 of 2012 (now R.S. 37:158). This Act authorizes the board to regulate all domestic and foreign firms practicing or offering to practice architecture in the state of Louisiana. Under the proposed Rule, a professional architectural corporation and an architectural-engineering corporation may continue to practice architecture in Louisiana as authorized by the Professional Architectural Corporations Law, R.S. 12:1086 et seq., and the Architectural-Engineering Corporations Law, R.S. 12:1171 et seq., as they have practiced in the past (see proposed §§1701 and 1703). In addition, such firms, limited liability companies, and other architectural firms may seek to obtain certificates of authority and to practice architecture in Louisiana as an architectural firm under the requirements of proposed §1705. The intent of the proposed Rule is for the board to regulate all architectural firms offering to practice or practicing architecture in Louisiana and establish a level playing field for all such firms. The effective dates of the proposed Rule are contained in proposed §1707.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part I. Architects

Chapter 17. Professional Architectural Corporations, Architectural-Engineering Corporations, and Architectural Firms

§1701. Professional Architectural Corporations

A. The practice of architecture in Louisiana by a professional architectural corporation is permissible when such corporation is lawfully constituted under the Professional Architectural Corporations Law, R.S. 12:1086 et seq., and it obtains a certificate of authority from the board authorizing it to so practice.

B. A person seeking a certificate of authority for a professional architectural corporation to practice architecture in Louisiana shall obtain an application from the board website, www.lastbdarchs.com. The applicant is required to complete the application fully and file same with the board. Upon receipt of such application and the fee described below, the board shall either approve said application and issue a certificate of authority to the professional architectural corporation, or disapprove said application advising the applicant of the reason(s) therefor. The certificate of authority must be renewed on an annual basis.

C. The fee for obtaining an initial certificate of authority for a resident professional architectural is \$75. The fee for obtaining an initial certificate of authority for a non-resident professional architectural corporation is \$150.

D. Architectural services rendered on behalf of a professional architectural corporation must be performed by or under the responsible supervision of one or more natural person(s) duly licensed to practice architecture in Louisiana. Performing or directly supervising the performance of all architectural services shall mean unrestricted, unchecked, and unqualified command of, and legal accountability for, the architectural services performed. Specifications,

drawings, or other related documents will be deemed to have been prepared by the architect or under the architect's direct supervision only when the requirements of §1313 of this Part are fully satisfied.

E. The architects licensed in this state who perform or directly supervise the performance of architectural services on behalf of a professional architectural corporation are responsible to the board for all of the acts and conduct of such corporation.

F. It shall be the responsibility of the directors of a professional architectural corporation to advise the board of any organizational change that would relate to the authority granted under this rule. Any failure to do so could result in imposition by the board of one or more of the disciplines set forth in R.S. 37:153 and/or R.S. 37:154 against the professional architectural corporation and the directors. Possible disciplines include, but are not limited to, the suspension, revocation, or rescission of:

1. the certificate of authority issued to the professional architectural corporation; and
2. the license of the directors.

G. A professional architectural corporation holding a certificate of authority and desiring to continue offering architectural services shall make application for renewal each year on or prior to June 30 by downloading a renewal form from the board website, www.lastbdarchs.com. Upon receipt of the completed application and the fee described below prior to June 30, a renewal certificate will be issued.

H. The fee for renewing a certificate of authority for a resident professional architectural corporation is \$75. The fee for renewing a certificate of authority for a non-resident professional architectural corporation is \$150.

I. The failure of a professional architectural corporation to renew its certificate of authority on or before June 30 shall not deprive such corporation of the right of renewal thereafter, provided it pays a delinquent fee to the board. The delinquent fee to be paid upon the renewal of a certificate of authority by a resident professional architectural corporation is \$75. The delinquent fee to be paid upon the renewal of a certificate of authority by a non-resident professional architectural corporation is one \$150. This delinquent fee shall be in addition to the renewal fee set forth in the preceding paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:571 (April 2003), amended LR 42:

§1703. Architectural-Engineering Corporations

A. The practice of architecture in Louisiana by an architectural-engineering corporation is permissible when such corporation is lawfully constituted under the Architectural-Engineering Corporations Law, R.S. 12:1171 et seq., and it obtains a certificate of authority from the board authorizing it to so practice.

B. A person seeking a certificate of authority for an architectural-engineering corporation to practice architecture in Louisiana shall obtain an application from the board website, www.lastbdarchs.com. The applicant is required to complete the application fully and file same with the board. Upon receipt of such application and the fee described below, the board shall either approve said application and issue a certificate of authority to the architectural-

engineering corporation, or disapprove said application advising the applicant of the reason(s) therefor. The certificate of authority must be renewed on an annual basis.

C. The fee for obtaining an initial certificate of authority for a resident architectural-engineering corporation is \$75. The fee for obtaining an initial certificate of authority for a non-resident architectural-engineering corporation is one \$150.

D. Pursuant to R.S. 12:1173, the architectural-engineering corporation shall designate in its application for certificate of authority one or more supervising professional architect(s) who shall perform or directly supervise the performance of all architectural services by said corporation in Louisiana. Performing or directly supervising the performance of all architectural services shall mean unrestricted, unchecked, and unqualified command of, and legal accountability for, the architectural services performed. Specifications, drawings, or other related documents will be deemed to have been prepared by the architect or under the architect's direct supervision only when the requirements of §1313 of this Part are fully satisfied. Only natural persons:

1. who are licensed by the board pursuant to the provisions of R.S. 37:141 through R.S. 37:158;
2. who are full-time active employees of the architectural-engineering corporation; and
3. whose primary occupation is with the architectural-engineering corporation may be designated as a supervising professional architect.

E. The architects licensed in this state who perform or directly supervise the performance of architectural services on behalf of an architectural-engineering corporation are responsible to the board for all of the acts and conduct of such corporation.

F. It shall be the responsibility of the designated supervising professional architect(s) of an architectural-engineering corporation to advise the board of any organizational change that would relate to the authority granted under this rule. Any failure to do so could result in imposition by the board of one or more of the disciplines set forth in R.S. 37:153 and/or R.S. 37:154 against the architectural-engineering corporation and the designated supervising professional architect(s). Possible disciplines include, but are not limited to, the suspension, revocation, or rescission of

1. the certificate of authority issued to the architectural-engineering corporation; and
2. the license of the designated supervising professional architect(s).

G. An architectural-engineering corporation holding a certificate of authority and desiring to continue offering architectural services shall make application for renewal each year on or prior to June 30 by downloading a renewal form from the board website, www.lastbdarchs.com. Upon receipt of the completed application and the fee described below on or prior to June 30, a renewal certificate will be issued.

H. The fee for renewing a certificate of authority for a resident architectural-engineering corporation is \$75. The fee for renewing a certificate of authority for a non-resident architectural-engineering corporation is \$150.

I. The failure of an architectural-engineering corporation to renew its certificate of authority on or before

June 30 shall not deprive such corporation of the right of renewal thereafter, provided it pays a delinquent fee to the board. The delinquent fee to be paid upon the renewal of a certificate of authority by a resident professional architectural corporation is \$75. The delinquent fee to be paid upon the renewal of a certificate of authority by a non-resident architectural-engineering corporation is \$150. This delinquent fee shall be in addition to the renewal fee set forth in the preceding paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:571 (April 2003), amended LR 42:

§1705. Architectural Firms

A. For purposes of this rule, the term “architectural firm” shall mean a corporation, partnership, limited liability partnership, limited liability company, association, sole proprietorship, or other entity lawfully organized under the laws of Louisiana or other lawful jurisdiction for the purpose of practicing architecture.

B. The practice of architecture in Louisiana by an architectural firm is only permissible when such firm is lawfully constituted under the laws of Louisiana or under the laws of some other lawful jurisdiction for the purpose of practicing architecture, and it complies with all of the requirements of this rule.

C. Except as provided *infra* in this rule, no architectural firm shall solicit, offer, execute, or perform architectural services in Louisiana without first receiving a certificate of authority from the board authorizing it to do so.

D. An architectural firm soliciting, offering, contracting to perform, or performing the practice of architecture in Louisiana shall be subject to the discipline of the board and to its authority to adopt rules and regulations governing the practice of architecture.

E. A person seeking a certificate of authority for an architectural firm to practice architecture in Louisiana shall obtain an application from the board website, www.lastbdarchs.com. The applicant is required to complete the application fully and file same with the board. Upon receipt of such application and the fee described below, the board shall either approve said application and issue a certificate of authority to the architectural firm, or disapprove said application advising the applicant of the reason(s) therefor. The certificate of authority must be renewed on an annual basis.

F. The fee for obtaining an initial certificate of authority for a resident architectural firm is \$75.00. The fee for obtaining an initial certificate of authority for a non-resident architectural firm is \$150.

G. The architectural firm shall designate in its application for certificate of authority one or more supervising professional architects who shall perform or directly supervise the performance of all architectural services by said firm in Louisiana. Performing or directly supervising the performance of all architectural services shall mean unrestricted, unchecked, and unqualified command of, and legal accountability for, the architectural services performed. Specifications, drawings, or other related documents will be deemed to have been prepared by the architect or under the architect’s direct supervision only

when the requirements of §1313 of this Part are fully satisfied. Only natural persons:

1. who are licensed by the board pursuant to the provisions of R.S. 37:141 through R.S. 37:158;

2. who are full-time active employees of the architectural firm; and

3. whose primary occupation is with the architectural firm may be designated as a supervising professional architect.

H. When the architectural firm designates an architect as a supervising professional architect, the architectural firm authorizes that architect to appear for and act on behalf of the firm in connection with the execution and performance of contracts to provide architectural services.

I. An architectural firm may practice architecture in Louisiana only as long as it employs a designated supervising professional architect who complies with §1705.F above. If the architectural firm designates only one architect as the supervising professional architect and that architect ceases being a full-time active employee of the architectural firm on a primary basis, the authority of such firm to practice architecture in Louisiana is suspended until such time as the firm designates another supervising professional architect pursuant to §1705.F above.

J. The architect(s) designated as the supervising professional architect(s) of the architectural firm is responsible to the board for all of the acts and conduct of the architectural firm.

K. The supervising professional architect(s) of the architectural firm shall advise the board of any organizational change that would relate to the authority granted under this rule. Any failure to do so could result in imposition by the board of one or more of the disciplines described in R.S. 37:153 and/or R.S. 37:154 against the architectural firm and the designated supervising professional architect(s). Possible disciplines include, but are not limited to, the suspension, revocation, or rescission of:

1. the certificate of authority issued to the architectural firm; and

2. the license of the designated supervising professional architect(s).

L. A corporation, partnership, limited liability partnership, limited liability company, association, sole proprietorship, or other entity lawfully organized under the laws of Louisiana or other lawful jurisdiction for the purpose of offering a combination of architectural services together with construction services (i.e., a design/build firm), must obtain a certificate of authority from the board as set forth in this rule and also comply with §1319 of this Part.

M. A joint venture practicing architecture in Louisiana shall not be required to obtain a certificate of authority from the board; however, all architectural firms practicing architecture in Louisiana as members of a joint venture are required to obtain a certificate of authority and otherwise comply with this rule.

N. A non-resident architectural firm associated within the meaning of §1317 of this Part with a resident architect or architectural firm for a specific and isolated project is not required to obtain a certificate of authority from the board, provided the resident architect is licensed in Louisiana or the resident architectural firm has obtained a certificate of authority from the board.

O. A sole proprietorship practicing architecture in Louisiana in the name of an individual registered with the board is not required to obtain a certificate of authority to practice architecture in Louisiana. A sole proprietorship practicing architecture in Louisiana under some name other than the name of an individual registered with the board is required to obtain a certificate of authority from the board.

P. A non-resident architectural firm retained by a Louisiana architect as a consultant only is not required to obtain a certificate of authority from the board.

Q. The architectural firm shall satisfy all of the requirements of the Louisiana secretary of state for doing business in this state.

R. An architectural firm holding a certificate of authority and desiring to continue offering architectural services in Louisiana shall make application for renewal each year on or prior to June 30 by downloading a renewal form from the board website, www.lastbdarchs.com. Upon receipt of the completed application and the renewal fee described below on or prior to June 30, a renewal certificate will be issued.

S. The fee for renewing a certificate of authority for a resident architectural firm is \$75. The fee for renewing a certificate of authority for a non-resident architectural firm is \$150.

T. The failure of an architectural firm to renew its certificate of authority on or before June 30 shall not deprive it of the right of renewal thereafter, provided it pays a delinquent fee to the board. The delinquent fee to be paid upon the renewal of a certificate of authority by a resident architectural firm is \$75. The delinquent fee to be paid upon the renewal of a certificate of authority by a non-resident architectural firm is \$150. This delinquent fee shall be in addition to the renewal fee set forth in the preceding paragraph.

U. Rules regulating the names of architectural firms are contained in Chapter 15 *supra*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:572 (April 2003), amended LR 42:

§1707. Effective date

A. Any license or certificate of authority issued by the board to a professional architectural corporation, architectural-engineering corporation, or limited liability company for the period ending June 30, 2017, shall expire no later than such date, and the rules in existence at the time such license or certificate is issued shall apply to the practice of architecture by such firm.

B. These rules shall apply to any professional architectural corporation, architectural-engineering corporation, or architectural firm seeking to obtain an initial certificate of authority from the board to practice architecture in Louisiana, or to renew any such certificate, for the period after July 1, 2017.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 42:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, or autonomy as described in R.S. 40:972.

Poverty Impact Statement

The proposed Rule is not anticipated to have an 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

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments on the proposed rule amendments through September 12, 2016, to Ms. Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, LA 70809.

Mary "Teeny" Simmons
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Professional Architectural Corporations, Architectural-Engineering Corporations, and Limited Liability Companies

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs (savings) to state or local governmental units associated with the proposed rule changes. The proposed rule changes adjust fees for resident and non-resident corporations licensed by the Board and make other technical and non-technical changes to rules governing licensure oversight and requirements of licenses. Although there will be a relatively small increase in the number of firms which the board will annually register, the board believes that existing staff will be able to handle this increased volume of registration and its related workload.

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

Under the proposed rules, the board will receive increased revenues resulting from the increase in initial, renewal, and delinquency fees charged to in-state architectural firms from \$50 to \$75 annually, and the increase in such fees charged to out-of-state architectural firms from \$50 to \$150 annually. However, this increase in revenues from architectural firms will be largely offset by an expected decrease in revenues from out-of-state individual registered architects who have registered in Louisiana only because the Louisiana Professional Architectural Corporation Law requires that a majority of the outstanding shares of a professional architectural corporation be held by one or more natural persons duly licensed to practice architecture in Louisiana. After applying this offset, the board calculates that the proposed rules will result in an increase in revenues to the board during 2017-2018 of approximately \$15,025, and similar increases in revenues in the years following.

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

The proposed rules will result in a small economic cost to architectural firms practicing architecture in Louisiana. Under the proposed rules, the initial registration, renewal registration,

and delinquency paid by in-state professional architectural corporations, architectural-engineering corporations, and limited liability companies will increase from \$50 annually to \$75 annually, and the initial registration, renewal registration, and delinquency paid by out-of-state professional architectural corporations, architectural-engineering corporations, and limited liability companies will increase from \$50 annually to \$150 annually. In addition, architectural firms practicing architecture in Louisiana who have not previously been registered with the board will be required to register for the first time. Under the proposed rules, professional architectural corporations may opt to practice as an architectural firm, rather than as a professional architectural corporation, and thereby receive an economic benefit (reduced cost) of registering only one architect with the board.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Although the proposed rules will impact the amount of fees that architectural firms will pay to the board, such rules will not impact the ability of such firms to compete for architectural projects or their employment of persons to perform architectural services. Accordingly, the board anticipates that the proposed rules will have no impact upon competition or employment in the public or private sectors.

Mary “Teeny” Simmons
Executive Director
1608#041

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Real Estate Commission**

Documentation (LAC 46:LXVII.1.305)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII.305. The purpose of the proposed Rule is to ensure that individuals making application to become a broker have first served as an active real estate licensee for an appropriate amount of time.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Subpart 1. Real Estate

Chapter 3. Initial License Applications

§305. Documentation

A. - A.4. ...

5. applicants for an initial individual real estate broker license shall provide proof that they have been licensed as an active real estate licensee for four years, with two of the four years occurring immediately preceding submission of a broker license application.

B. - B.3 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006), repromulgated LR 37:2999 (October 2011), amended LR 42:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the August 20, 2016 *Louisiana Register*: The proposed Rule has no known impact on family, formation, stability, or autonomy.

Poverty Impact Statement

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

Public Comments

Interested parties may submit written comments on the proposed regulations to Ryan Shaw, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or rshaw@lrec.state.la.us, through September 12, 2016 at 4:30 p.m.

Public Hearing

If it becomes a necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held on September 27, 2016 at 9 a.m. at the office of the Louisiana Real Estate Appraisers Board, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Documentation**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to state or local governmental units associated with the proposed rule change. The proposed rule change provides for experience requirements of individuals seeking licensure as real estate brokers.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

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

The proposed rule change may prohibit or delay the acquisition of licensure as a real estate broker for individuals that have not held an active real estate licensure for four years, with two of the four immediately preceding application for a broker licensure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change may prohibit or delay the acquisition of licensure as a real estate broker for individuals that have not held an active real estate licensure for four years, with two of the four immediately preceding application for a broker licensure.

Bruce Unangst
Executive Director
1608#042

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Drug and Device Distributors

General Provisions, Requirements, Qualifications,
Recordkeeping, Fees, Wholesale Distributors,
and Third-Party Logistics Providers
(LAC 46:XCI.103, 105, Chapter 3,
801, Chapter 13 and Chapter 15)

The Louisiana Board of Drug and Device Distributors proposes to amend LAC 46:XCI.103, 105, 301, 303, 305, 307, 311, 315, and 801, and to adopt Chapter 13 and Chapter 15 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq. of the Louisiana Drug and Device Distributors Act. This proposed Rule will support the board's ability to license entities and regulate the distribution of legend drugs and legend devices into and within the state of Louisiana in its effort to safeguard the life and health of its citizens and promote the public welfare. The proposed Rule is set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XCI. Drug and Device Distributors

Chapter 1. General Provisions

§103. Definition

A. As used in this regulation, unless the context otherwise requires, the following terms are defined as:

* * *

Dispense or Dispenser or Dispensing—the interpretation, evaluation, and implementation of a drug order, including the preparation and delivery or transfer of possession of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

* * *

Standard Distributors—distributors of legend drugs and legend devices not to include third-party logistics providers and wholesale distributors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:381 (April 1992), amended LR 29:1479 (August 2003), LR 32:394 (March 2006), LR 34:874 (May 2008), LR 35:1537 (August 2009), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

§105. Exemptions

A. Distribution does not include:

1. intra-company distribution to licensed drug or device distributors physically located in Louisiana;
2. the distribution of a drug or device or an offer to distribute a drug or device by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
3. the distribution of a drug or device or an offer to distribute a drug or device among hospitals or other health care entities that are under common ownership;
4. the distribution of a drug or device or an offer to distribute a drug or device for emergency medical reasons

including transfers of drugs or devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage that arises from delays in or interruptions of regular distribution schedules or a public health emergency declaration;

5. ...

6. the distribution of drug or device samples by manufacturers' representatives or distributors' representatives;

7. the distribution of blood and blood components intended for transfusion; or

8. the distribution of legend drugs by retail pharmacies to licensed practitioners for office use where the annual dollar volume of legend drugs sold to licensed practitioners does not exceed five percent of the dollar volume of that retail pharmacy's annual legend drug sales.

9. the distribution of devices by manufacturers' sales representatives during transportation to customers;

10. the distribution of a software utilized in a non-emergency, delayed patient monitoring system to be used in remote monitoring not intended to provide real time integrated data from a continuous or long-time, non-invasive patient monitoring device, and that has been previously approved by the appropriate federal agency; this exemption shall not be deemed to prohibit regulation in accordance with quarantine statutes.

B. Wholesale distribution does not include:

1. intra-company distribution between members of an affiliate or within a manufacturer;

2. the distribution of or offer to distribute among hospitals or other health care entities which are under common control;

3. the distribution or offer to distribute for emergency medical reasons including a public health emergency declaration, except that a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason;

4. the dispensing pursuant to a prescription;

5. the distribution of minimal quantities by a licensed retail pharmacy to a licensed practitioner for office use;

6. the distribution or offer to distribute by charitable organizations to nonprofit affiliates of the organization;

7. the purchase or other acquisition by a retail dispenser, hospital, or other health care entity for use by such retail dispenser, hospital, or other health care entity;

8. the distribution by the manufacturer;

9. the receipt or transfer by an authorized third-party logistics provider provided that such third-party logistics provider does not take ownership;

10. a common carrier that transports a drug product, provided that the common carrier does not take ownership;

11. the distribution or offer to distribute by an authorized repackager that has taken ownership or possession and repacks;

12. salable drug product returns when conducted by a retail dispenser;

13. the distribution of a collection of finished medical devices, which may include a product or biological product, assembled in kit form strictly for the convenience of the purchaser or user, if:

a. the kit is assembled in an establishment registered with FDA as a device manufacturer;

b. the kit does not contain a controlled substance that appears in a schedule contained in the Comprehensive Drug Abuse Prevention and Control Act of 1970 and any amendments to;

c. the kit includes a product, the person that manufactures the kit:

i. purchased directly from the manufacturer or from a wholesale distributor that purchased directly from the manufacturer, and

ii. does not alter the primary container or label of the product as purchased from the manufacturer or wholesale distributor; and

d. kits that include a product and the product is:

i. an intravenous solution intended for replenishment of fluids and electrolytes;

ii. intended to maintain the equilibrium of water and minerals in the body;

iii. intended for irrigation or reconstitution;

iv. an anesthetic;

v. an anticoagulant;

vi. a vasopressor, or

vii. a sympathomimetic;

14. the distribution of an intravenous drug that by its formulation is intended for the replenishment of fluids and electrolytes or calories;

15. the distribution of an intravenous drug used to maintain the equilibrium of water and minerals in the body;

16. the distribution of a drug intended for irrigation, or sterile water, whether intended for such purposes or for injection;

17. the distribution of medical gas;

18. facilitating the distribution by providing solely administrative services including processing orders and payments; or

19. the transfer by a hospital or other health care entity, or by a wholesale distributor or manufacturer operating at the direction of the hospital, or other healthcare entity, to a repackager who is registered for the purpose of repackaging for use by the hospital, or other health care entity, and other health care entities that are under common control, if ownership of the drug remains with the hospital or other health care entity at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 35:1537 (August 2009), amended LR 36:321 (February 2010), LR 36:2560 (November 2010), LR 37:899 (March 2011), amended by the Department of Health, Board of Drug and Device Distributors LR 42:

Chapter 3. Drug and Device Distributors

§301. Licensing, Renewal and Reinstatement Requirements

A. The Board shall issue sub-types for distributors of legend drug and legend device licenses as follows:

1. standard distributors;

2. wholesale distributors; and

3. third-party logistics provider distributors.

B. Every drug or device distributor shall submit an initial application for a new license on a form furnished by the board and accompanied by the initial license fee.

1. - 2. ...

C. All new licenses issued by the board shall expire on December 31 of the calendar year issued.

D. A license shall be renewed annually by timely submitting an application and the license renewal fee.

E. Each application for the renewal of the license must be made between October 1 and December 31 of each year on a paper or electronic form provided by the board.

1. - 2. ...

3. A person may not lawfully operate as a drug or device distributor in Louisiana until the expired license has been reinstated.

F. Licenses renewed annually between October 1 and December 31 shall expire on December 31 of the following calendar year.

G. Each license issued hereunder shall be displayed by the licensee in a conspicuous place at the licensed facility or physical location.

H. Out-of-state drug or device distributors licensed by the board must have on file at all times with the board a current copy of a valid certificate of registration or license for drug or device distribution as issued by the appropriate regulatory board or agency of the state in which the facility or physical location licensed with the board is located or registration or license as issued by the appropriate federal agency when applicable.

1. If the state in which the facility licensed with the board is located does not require the facility to be registered or licensed as a drug or device distributor and the facility or physical location is registered or licensed in the state in which it is located as a manufacturer of drugs or devices, a current copy of the valid manufacturer registration or license must be submitted to and maintained with the board.

2. If the state in which the facility or physical location licensed with the board is located does not require the facility or physical location to be registered or licensed as a drug or device distributor and/or the facility or physical location is not a registered/licensed manufacturing facility and the state in which the facility or physical location is located does not require any registration or licensure of the facility or physical location, a letter from the appropriate state regulatory board or agency must be submitted to the board confirming such fact.

a. If the state in which the facility or physical location is located does not require any registration or licensure for distribution or manufacturing but a federal agency does require and issues registration or licensure to the facility or physical location licensed by this board, a copy of the federal registration or license must be submitted.

3. If the facility or physical location licensed with the board does not physically distribute and/or manufacture the drugs or devices that it owns or holds title to and/or the facility or physical location licensed with the board contracts with a third-party logistics provider for distribution of the drugs or devices and the state in which the facility or physical location licensed by the board is located does not require any registration or licensure of the facility or physical location, a letter from the appropriate state regulatory board or agency confirming this fact and a current copy of the valid registration or license from the state in which the third-party logistics provider facility is located must be submitted to the board.

a. if the state in which the third-party logistics provider facility or physical location is located does not require any registration or licensure for third-party logistics providers but a federal agency does require and issues registration or licensure to the third-party logistics provider facility or physical location licensed by this board, a copy of the federal registration or license must be submitted.

I. An initial application for a new license is valid for 180 days after receipt by the board and must be completed within this time frame.

1. - 2. ...

J. Requests for voluntary cancellation of a license made by a licensee must be made in writing and must include information such as, but not limited to, the date the request is effective and the reason for the voluntary cancellation of the license.

1. ...

K. If a licensed in-state drug or device distributor has an additional off-site storage facility, the off-site storage facility may operate under the current drug or device distribution license held by the licensee as long as the off-site storage facility is in compliance with §309.A.1 of this Part and has temperature monitoring and an alarm system and the off-site storage facility does not physically receive or distribute legend drugs or devices from its location.

L. A license shall not be issued by the board for any drug or device distributor to operate from or out of a dwelling, building, or property zoned as residential.

M. A license issued to a drug or device distributor will be revoked after 180 days from the date of issuance if an inspection and disciplinary hearing reveal a lack of legitimate business activity as per recordkeeping requirements of §311.B of this Part or a violation of any provisions of this Title.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:396 (March 2006), LR 34:875 (May 2008), LR 35:1538 (August 2009), LR 36:322 (February 2010), LR 39:2758 (October 2013), amended by the Department of Health, Board of Drug and Device Distributors LR 42:

§303. Required Information

A. The board requires the following from each applicant as part of the initial licensing procedure and as part of any renewal or reinstatement of such license:

1. the company name, physical distribution address, business address, and the name and contact information of the person for the facility or physical location of the applicant;

2. ...

3. the mailing address, and the name and contact information of the person for regulatory compliance used by the applicant;

4. - 5. ...

6. the name and contact information of the person appointed as the designated responsible party;

7. - 9. ...

B. Changes in any information with regard to, but not limited to, contact persons for the facility or physical location, the owners of the licensee including the percentage of interest owned, the person appointed as the designated

responsible party, the directors and officers of the licensee, or the regulatory contact person shall be submitted in writing to the board within 60 days after such changes become effective. Failure to do so may result in disciplinary action being taken against the licensee.

B.1. - C. ...

D. Drug or device distributors with a place of business physically located in Louisiana must notify the board, in writing, within three business days of discovery of, or being in a position to have acquired such knowledge of, any theft or diversion of drugs or devices.

E. Drug or device distributors with a place of business physically located in Louisiana must notify the board, in writing, within 24 hours of discovery of, or being in a position to have acquired such knowledge of, any contraband, counterfeit, or misbranded drugs or devices in their possession whether actual or constructive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 30:1481 (July 2004), LR 32:397 (March 2006), LR 35:1539 (August 2009), LR 36:1246 (June 2010), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

§305. Qualifications

A. The board shall consider the following factors in issuing an initial license, the renewal of an existing license, or reinstatement of a license to a person to engage in the distribution of drugs and devices:

1. any convictions of the applicant or designated responsible party under any federal, state, or local laws relating to drug samples, drug or device distribution, retail drug dispensing, or distribution of controlled substances;

2. ...

3. the applicant's past experience in the manufacture or distribution of drugs or devices, including controlled substances;

4. - 6. ...

7. compliance with the requirements to maintain and/or make available to the state licensing authorities or to federal, state, or local law enforcement officials those records required to be maintained by drug or device distributors;

A.8. - C. ...

D. The designated responsible party must have knowledge of the policies and procedures pertaining to operations of the applicant or licensed drug or device distribution facility.

1. A designated responsible party must meet the following requirements:

a. ...

b. have at least two years of full-time employment history with either a pharmacy, legend drug or device distributor, or medical gas distributor in a capacity related to the retail drug dispensing, distribution, and recordkeeping of legend drugs or devices; or other similar qualifications as deemed acceptable by the board;

c. be employed by the applicant or drug or device distributor in a full-time position;

d. ...

e. be physically present at the facility of the applicant or drug or device distributor during regular business hours, except when absence of the designated responsible party is authorized, including, but not limited to, sick leave and vacation leave;

f. serve in the capacity of a designated responsible party for only one applicant or drug or device distributor at a time, except where more than one licensed drug or device distributor is co-located in the same facility;

g. not have any felony convictions under federal, state, or local law relating to drug or device distribution, retail drug dispensing, or distribution of controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 32:398 (March 2006), LR 35:1539 (August 2009), LR 39:2758 (October 2013) amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

§307. Personnel

A. Personnel employed in drug or device distribution shall have appropriate education and/or experience to assume responsibility for positions related to compliance with state licensing requirements.

B. A drug or device distributor licensed by the board shall be responsible for the acts and/or omissions of such personnel which are deemed in violation of the Louisiana statutes for drug or device distributors and board promulgated regulations. The board shall have the authority to proceed with disciplinary action and sanction its licensee for such acts and/or omissions of his personnel in violation of the statutes and/or regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 32:398 (March 2006), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

§309. Storage and Handling Requirements

A. The following are required for the storage and handling of drugs or devices, and for the establishment and maintenance of drug or device distribution records by drug or device distributors and their officers, agents, representatives, and employees.

1. - 1.e. ...

2. Security

a. A facility used for drug or device distribution shall be secure from unauthorized entry.

a.i. - b. ...

c. A distributor that distributes medical gases only shall store a medical gas under lock and key if the medical gas is stored inside a board-approved storage facility that is not equipped with a monitored alarm system to detect entry after hours.

d. A distributor that distributes medical gases only who stores the medical gas on an open dock shall be equipped with a monitored alarm system to detect entry after hours.

2.e. - 3. ...

a. If no storage requirements are established for a drug or device, the drug or device may be held at room

temperature, as defined in an official compendium of pharmacology and drug formulation, to help ensure that its identity, strength, quality, and purity are not adversely affected.

3.b. - 5.b. ...

c. If the conditions under which a drug or device has been returned cast doubt on the drug or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed or returned to the supplier, unless examination, testing or other investigation proves that the drug or device meets appropriate standards for safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug or device has been returned cast doubt on the drug or device's safety, identity, strength, quality, or purity, the drug or device distributor shall consider, among other things, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:398 (March 2006), LR 34:875 (May 2008), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

§311. Drug or Device Distribution Recordkeeping

A. Drug or device distributors shall establish and maintain perpetual inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs or devices. These records shall include the following information:

1. - 3. ...

B. Drug or device distributors shall establish and maintain financial records, including all financial and banking receipts as they relate to drug, device, or medical gas sales, distribution, inventories, receipts or deliveries and monthly banking statements and deposit receipts for all banking accounts containing funds with which drugs or devices have been purchased and/or sold for a minimum of three years from the date each record was created.

C. - E. ...

F. Distributors that distribute medical gas are not required to maintain a perpetual inventory on oxygen, but are required to maintain perpetual inventories on all other medical gases.

G. Drug or device distributors physically located and conducting operations in Louisiana:

1. shall not purchase or receive drugs or devices from other than drug or device distributors licensed by the board to distribute in or into Louisiana; and

2. shall notify the board of any distributors not licensed by this board distributing or offering to distribute drugs or devices in or into Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:383 (April 1992), amended LR 29:1480 (August 2003), LR 32:399 (March 2006), LR 34:875 (May 2008), LR 36:322 (February 2010), LR 39:2758 (October 2013), amended by the

Department of Health, Board of Drug and Device Distributors, LR 42:

§313. Policy and Procedures

A. Drug or device distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs or devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories including contraband or counterfeit drug or device information. Drug or device distributors shall include in their written policies and procedures the following:

1. - 2.c. ...

3. a procedure to ensure that drug or device distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

4. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 29:1480 (August 2003), LR 32:400 (March 2006), LR 39:91 (January 2013), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

§315. Organizational On-Site List

A. Drug or device distributors shall establish and maintain an on-site list of owners, officers, directors, managers, and other persons in charge of drug or device distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:400 (March 2006), LR 35:1539 (August 2009), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

Chapter 8. Fees

§801. Fees

A. The board may collect the following fees:

1. initial license fee:
 - a. one license sub-type—\$400;
 - b. two license sub-types—\$425;
 - c. three license sub-types—\$450;
2. license renewal fee:
 - a. one license sub-type—\$300;
 - b. two license sub-types—\$325;
 - c. three license sub-types—\$350;
3. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 32:403 (March 2006), amended LR 35:1540 (August 2009), LR 38:1961 (August 2012), amended by the Department of Health, Board of Drug and Device Distributors, LR 42:

Chapter 13. Wholesale Distributors

§1301. License Requirements

A. No person may engage in wholesale distribution of drug products in the state unless such person:

1.a. is licensed by the state from which the drug product is distributed; or

b. if the state from which the drug product is distributed has not established a licensure requirement, is licensed by the appropriate federal official in accordance with federal regulation; and

2. if the drug product is distributed interstate is licensed by the state into which the drug product is distributed if the state into which the drug product is distributed requires the licensure of a person that distributes drug products into the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1303. Definitions

A. As used in this chapter, the following terms are defined herein.

Exclusive Distributor—the wholesale distributor that directly purchased the product from the manufacturer and is the sole distributor of that manufacturer's product to a subsequent repackager, wholesale distributor, or retail dispenser.

Illegitimate Product—a product in which credible evidence shows that it:

- a. is counterfeit, diverted or stolen;
- b. is intentionally adulterated such that the product would result in serious adverse health consequences or death to humans;
- c. is the subject of a fraudulent transaction; or
- d. appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences or death to humans.

Suspect Product—a product for which there is reason to believe it may be illegitimate.

Trading Partners—a manufacturer, repackager, wholesale distributor, or retail dispenser from whom a manufacturer, repackager, wholesale distributor, or retail dispenser accepts direct ownership of a product or to whom a manufacturer, repackager, wholesale distributor, or retail dispenser transfers direct ownership of a product; or a third-party logistics provider from whom a manufacturer, repackager, wholesale distributor, or retail dispenser accepts direct possession of a product or to whom a manufacturer, repackager, wholesale distributor, or retail dispenser transfers direct possession of a product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1305. General Requirements

A. A wholesale distributor shall not accept ownership of a product unless the previous owner provides the transaction history, transaction information, and a transaction statement for the product at the time of the transaction.

B. When a wholesale distributor purchases product, whether or not directly from a manufacturer, an exclusive distributor, or a repackager that purchased directly from a manufacturer, the wholesale distributor shall provide a transaction statement, transaction history, and/or transaction information in accordance with federal regulations at the

time of each transaction in which the wholesale distributor transfers ownership of product to subsequent purchasers.

C. A wholesale distributor shall:

1. capture the transaction information, transaction history, and transaction statement for each transaction and maintain such information, history, and statement for not less than six years after the date of the transaction; and

2. maintain the confidentiality of the transaction information, transaction history, and transaction statement for a product in a manner that prohibits disclosure to any person other than the appropriate federal or state official except where required among trading partners.

D. Wholesale distributors physically located and conducting operation in Louisiana:

1. shall not purchase or receive product from other than trading partners licensed by the board to distribute in or into Louisiana; and

2. shall notify the board of any trading partners not licensed by this board distributing or offering to distribute product in or into Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1307. Returns

A. A wholesale distributor may return a nonsaleable product to the manufacturer or repackager, to the wholesale distributor from whom the product was purchased, or to a person acting on behalf of such a person, including a returns processor, without providing the transaction history, transaction information, and transaction statement for the product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1309. Requests for Information

A. In the event of a recall or for the purpose of investigating a suspect or an illegitimate product and upon a request by the appropriate federal or state official, a wholesale distributor shall, not later than one business day and not exceeding 48 hours after receiving the request for information, provide the applicable transaction information, transaction history, and transaction statement for the product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1311. Verification Requirements

A. A wholesale distributor shall have systems in place to enable the wholesale distributor to comply with the following requirements.

1. Upon making a determination that a product in possession or control of a wholesale distributor is a suspect product, or upon receiving a request for verification from the appropriate federal official that has made a determination that a product within the possession of a wholesale distributor is a suspect product, a wholesale distributor shall:

a. quarantine the suspect product from product intended for distribution until the suspect product is cleared or dispositioned; and

b. promptly conduct an investigation to determine whether the suspect product is an illegitimate product, which shall include validating any applicable transaction history and transaction information in the possession of the wholesale distributor and otherwise investigating to determine whether the product is an illegitimate product.

2. If the wholesale distributor determines that a suspect product is not an illegitimate product, the wholesale distributor shall promptly notify the appropriate federal or state official of such determination and such product may be further distributed.

3. A wholesale distributor shall keep records of the investigation of a suspect product for not less than six years after the conclusion of the investigation.

B. In a manner consistent with the systems and processes of the wholesale distributor, the wholesale distributor shall:

1. upon determining that a product in the possession or control of a wholesale distributor is an illegitimate product:

a. quarantine the illegitimate product from product intended for distribution until the illegitimate product is dispositioned;

b. disposition the illegitimate product that is in the possession or control of the wholesale distributor;

c. take reasonable and appropriate steps to assist trading partners in the disposition of the illegitimate product that is not in the possession or control of the wholesale distributor; and

d. retain a sample of the illegitimate product for further physical examination or laboratory analysis of the product as necessary and appropriate;

2. upon determining that a product is an illegitimate product, the wholesale distributor shall notify the appropriate federal or state officials and all immediate trading partners that there is reason to believe the wholesale distributor may have received an illegitimate product no later than 24 hours after making such determination;

3. upon the receipt of a notification from the appropriate federal or state official or a trading partner that a determination has been made that a product is an illegitimate product, a wholesale distributor shall identify all illegitimate product subject to the notification that is in the possession or control of the wholesale distributor, including any product that is subsequently received, and shall perform the activities described in Subsection A of this Section;

4. upon making a determination, in consultation with the appropriate federal official, that a notification is no longer necessary, a wholesale distributor shall promptly notify immediate trading partners that such notification has been terminated;

5. a wholesale distributor shall keep records of the disposition of an illegitimate product for not less than six years after the conclusion of the disposition.

C. A wholesale distributor may satisfy the requirements of this section by developing a secure electronic database or utilizing a secure electronic database developed or operated by another entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1313. Federal Reporting

A. Any person who owns or operates an establishment that engages in wholesale distribution shall:

1. report to the appropriate federal official, on an annual basis on a schedule determined by the appropriate federal official:

a. each state by which the wholesale distributor is licensed and the appropriate state license number issued by the state to the wholesale distributor; and

b. the name, address, and contact information of each wholesale distributor facility at which, and all trade names under which, the wholesale distributor conducts business; and

2. report to the appropriate federal official within a reasonable period as determined by the appropriate federal official, any significant disciplinary actions, such as the revocation or suspension of a wholesale distributor license, as taken by any state or federal agency against the wholesale distributor during the reporting period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

Chapter 15. Third-party Logistics Providers

§1501. General Requirements

A. No third-party logistics provider may conduct distribution activities in the state unless each facility of the third-party logistics provider:

1.a. is licensed by the state from which the drug or device is distributed by the third-party logistics provider; or

b. is licensed by the appropriate federal official in accordance with federal regulation, if the state from which the drug or device is distributed by the third-party logistics provider does not require licensure for third-party logistics providers;

2. is licensed by each state into which the drug or device is distributed by the third-party logistics provider, if the drug or device is distributed interstate; unless the third-party logistics provider is licensed by the appropriate federal official in accordance with federal regulations.

B. If the third-party logistics provider is licensed by the appropriate federal official in accordance with federal regulations and will be conducting distribution activities into the state, the third-party logistics provider must notify the board in writing on a form provided by the board to include a copy of the federal license as issued by the appropriate federal official in accordance with federal regulations and with no state fee required for the notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

§1503. Federal Reporting

A. third-party logistics provider shall report to the appropriate federal official on an annual basis on a schedule determined by the appropriate federal official:

1. the state in which the third-party logistics provider facility is licensed and the appropriate state license number issued by the state to the third-party logistics provider; and

2. the name and address of the third-party logistics provider facility and all trade names under which the third-party logistics provider facility conducts business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Drug and Device Distributors, LR 42:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature and in accordance with R.S. 49:972, it is anticipated that the proposed rules and amendments will have no impact on family stability, functioning, and autonomy.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature and in accordance with R.S. 49:973, it is anticipated that the proposed rules and amendments will have no impact on household income, assets, and financial security; early childhood and educational development; employment and workforce development; taxes and tax credits; or child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature and in compliance with R.S. 49:965, it is anticipated that the proposed rules and amendments should have no significant adverse impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution 170 of the 2014 Regular Session of the Louisiana Legislature, it is anticipated that the proposed rules and amendments will have no impact on providers of services to individuals with developmental disabilities.

Public Comments

Interested parties may submit written comments to Kimberly Barbier, Executive Assistant, Louisiana Board of Drug and Device Distributors, 12091 Bricksome Avenue, Suite B, Baton Rouge, LA 70816. Comments will be accepted through the close of business on September 20, 2016.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing would be held on September 27, 2016, at 11 am at the office of the Louisiana Board of Drug and Device Distributors, 12091 Bricksome Avenue, Suite B, Baton Rouge, LA.

George Lovecchio
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: General Provisions, Requirements, Qualifications, Recordkeeping, Fees, Wholesale Distributors, and Third-Party Logistics Providers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation cost to the state for the proposed rule changes is approximately \$1,400 in FY17 associated with publishing the proposed rule changes. Licensees will be informed of the rule changes via the Board's

regular newsletter or other direct mailings, which will result in minimal costs to the Board. Local governmental units will not incur any costs as a result of this rule.

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

The proposed rule changes are anticipated to increase annual revenues for the Board by approximately \$18,100 beginning in FY17. Proposed rule changes include the addition of license sub-types to the distributor license issued by the Board and re-structuring of the Board's current initial and renewal fees in association with the new distributor license sub-types. The proposed distributor license sub-types include standard distributor, wholesale distributor, and third-party logistics provider distributor. The delineation of license sub-types increases the initial license fee and annual license renewal fee by \$25 per additional sub-type delineated on the distributor license.

There are approximately 2,170 licenses in the current fiscal year. It is anticipated if twenty percent (20%) of these current licenses (434 licenses) will add one additional license sub-type (\$10,850) and 5% of these current licensees (108 licenses) will add two additional license sub-types (\$5,400) for a total projected increase in annual revenues of \$16,250. In addition, it is estimated there will be 250 new applicants and licensees in FY17. Using the same percentage projection for new applicants (250: 20%=50; 5%=12), there would be an annual estimated increase of \$1,850 in initial license fees.

The total estimated annual revenue increase is approximately \$18,100 beginning in FY17.

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

Current drug and device distributor licensees and applicants for licensure will pay \$25 per additional license sub-type based on the proposed rule changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

George Lovecchio
Executive Director
1608#011

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Board of Medical Examiners**

**Podiatry Licensure and Certification
(LAC 46:XLV.1307)**

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270 and the Louisiana Podiatric Practice Act, R.S. 37:611-628, that the board intends to amend its rules on licensure and certification of podiatrists. The proposed changes add a new Subsection (1307G.) providing for updating a history and physical examination by podiatrists who hold advanced certification status with the board in specified instances and settings. The changes also renumber the previous Subsection 1307G. as 1307H. The proposed amendments are set forth below.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 13. Podiatrists

**Subchapter B. Requirements and Qualifications for
Licensure, Scope of Practice**

**§1307. Qualifications for Certification for Advanced
Practice; Scope of Practice**

A. - F.3. ...

G. Patient history and examination. Provided a history and physical (H&P) examination has been performed by a Louisiana licensed physician or duly authorized advanced practice registered nurse within thirty days of a podiatric surgical procedure, a podiatrist certified for advanced practice under this Section may perform an update to the H&P for the purpose of pre-operative evaluation provided the:

1. podiatric surgical procedure is performed in a hospital or ambulatory surgical center (ASC) licensed by the state;

2. podiatrist's credentials have been approved by the hospital or ASC medical staff and the podiatrist has been authorized to perform the procedure in accordance with the hospital or ASC's prescribed policies and procedures; and

3. updated examination and history are directly related to the podiatry procedure the podiatrist is authorized to perform under the scope of his or her license.

H. The burden of satisfying the board as to the qualifications and eligibility of the applicant for certification of practice prerogatives shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:611-37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:241 (February 2009), amended by the Department of Health, Board of Medical Examiners, LR 42:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed

amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., September 19, 2016.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on September 28, 2016 at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Eric D. Torres
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Podiatry Licensure and Certification

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation costs to the Louisiana State Board of Medical Examiners is approximately \$248 in FY 17 for notice and rule publication costs. There are no estimated implementation savings to state or local governmental units through promulgation of the proposed rules changes. The proposed rule change provides that if a Louisiana licensed physician or duly authorized advance practice registered nurse has performed a full history and physical examination (H&P) of a patient within 30 days of a podiatric surgical procedure a podiatrist certified by the board for advanced practice may update the H&P for the purpose of pre-operative evaluation. However, a certified podiatrist may update the H&P provided that: (i) the surgical procedure is performed in a hospital or ambulatory surgical center licensed by the state; (ii) the podiatrist is credentialed by the facility to perform the procedure; and (iii) the updated H&P are directly related to the procedure which the podiatrist is authorized to perform under the scope of his/her license.

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

There is no anticipated effect on the Board's revenue collections or those of any other state or local governmental unit.

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

All podiatrists certified by the Board for advanced practice, who perform surgery requiring anesthesia services in a licensed hospital or ambulatory surgery center (ASC), will be favorably

impacted by the rule changes. This rule change will provide these certified podiatrists the ability to update a H&P for podiatric surgery requiring anesthesia services. The proposed change may reduce costs currently incurred by virtue of the need for another provider to update a H&P within 24 of a podiatric surgery requiring anesthesia services. Otherwise, the proposed changes will not have a material effect on costs, paperwork or workload of podiatrist or other providers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule change will have any impact on competition or employment in either the public or private sector.

Eric D. Torres, E.T.
Executive Director
1608#060

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Healthcare Services Provider Fees
Emergency Ambulance Service Providers
(LAC 48:I.4001,4003 and 4007)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50: I.4001, 4003 and 4007 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 46:2625. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of Management and Finance, amended and repromulgated the regulations governing provider fees for certain health care services pertaining to the administration of fees and the rights and obligations of service providers on whom such fees are imposed (Louisiana Register, Volume 26, Number 7).

Act 305 of the 2016 Regular Session of the Louisiana Legislature directed the Department of Health to establish qualifying criteria and implement a provider fee for qualified providers of emergency ground ambulance services.

In compliance with Act 305, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing provider fees for certain health care services in order to implement a provider fee assessment for qualifying emergency ground ambulance service providers (Louisiana Register, Volume 42, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2016 Emergency Rule.

Title 48

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. General Administration

Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. Definition

Net Operating Revenue—the gross revenues of an emergency ground ambulance service provider for the provision of emergency ground ambulance transportation services, excluding any Medicaid reimbursement, less any

deducted amounts for bad debts, charity care and payer discounts.

* * *

B. – D. ...

E. Medical Transportation Services. Effective for dates of service on or after August 1, 2016, qualifying emergency ground ambulance service providers shall be assessed a fee of one and one-half percent of the net operation revenue.

1. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to be assessed a fee of one and one-half percent of the net operating revenue. The ambulance service provider must be:

- a. licensed by the State of Louisiana;
- b. enrolled as a Louisiana Medicaid provider;
- c. a provider of emergency ground ambulance transportation services as defined in 42 CFR 440.170 and Medical and Remedial Care and Services Item 24.a; and
- d. a non-federal, non-public provider in the state of Louisiana, as defined in 42 CFR 433.68(c)(1), of emergency ground ambulance services that is contracted with a unit of local or parish government in the state of Louisiana for the provision of emergency ground ambulance transportation on a regular 24 hours per day and 7 days per week basis.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§4003. Due Date for Submission of Reports and Payment of Fees

A. ...

B. Medical Transportation Services. Effective August 1, 2016, qualified ambulance service providers will be assessed a fee at the end of each quarter not to exceed one and one-half percent of the net operating revenue of emergency ground ambulance service providers.

1. Qualified ambulance service providers will provide the Department of Health (Department) a monthly net operating revenue report for emergency ground ambulance transportation services by the fifteenth business day of the following month.

2. Qualified ambulance service providers will be issued a quarterly notice within 30 days from the end of the quarter. Payment will be due to the Department by qualified ambulance service provider within 30 days from date of notice.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§4007. Delinquent and/or Unpaid Fees

A. Interest on Unpaid Provider Fees Other Than Medical Transportation Provider Fees. When the provider fails to pay

the fee due, or any portion thereof, on or before the date it becomes delinquent, interest at the rate of one and one-half percent per month compounded daily shall be assessed on the unpaid balance until paid. In the case of interest on a penalty assessed, such interest shall be computed beginning 15 days from the date of notification of assessment until paid.

B. Collection of Delinquent Provider Fee Other Than Medical Transportation Provider Fees

B.1. - D. ...

E. Emergency Ground Ambulance Service Provider Fees

1. Penalties and Interest for Non-Payment of Assessment

a. If the department audits a qualifying ambulance service provider's records and determines the net operating revenue reported is incorrect for the assessment collected, the department shall fine the qualifying ambulance service provider .15 percent of the corrected assessment. The fine is payable within 30 days of the invoice.

b. If a qualifying ambulance service provider fails to fully pay its assessment on or before the due date, the Department shall assess a late penalty of .15 percent of the quarterly calculated assessment. The Department shall reserve the right to suspend all Medicaid payments to a qualifying ground ambulance service provider until the provider pays the assessment and penalty due in full or until the provider and the Department reach a negotiated settlement.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:1114 (October 1994), LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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.

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,

but may increase direct or indirect cost to the provider to provide the same level of service due to provider fees imposed on qualifying ground ambulance service providers. This proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the payment of fees adversely impacts the provider's financial standing.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, September 29, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Healthcare Services Provider Fees— Emergency Ambulance Service Providers**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will result in a programmatic cost to the state associated with the use of provider fee revenue collections. The associated cost is reflected in the Medical Transportation Program – Emergency Ambulance Services – Enhanced Reimbursements Rule published in the August 20, 2016 edition of the Louisiana Register. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 16-17 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 increase statutory dedicated revenue collections by approximately \$2,092,091 for FY 16-17, \$3,138,137 for FY 17-18 and \$3,138,137 for FY 18-19. In addition, it is anticipated that federal revenue collections will increase by approximately \$3,451,664 for FY 16-17, \$5,177,011 for FY 17-18 and \$5,177,011 for FY 18-19. It is anticipated that \$324 will be expended in FY 16-17 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule continues the provisions of the August 1, 2016 Emergency Rule which amended the provisions governing provider fees for certain health care services in order to implement a provider fee assessment for qualifying emergency ground ambulance service providers. Emergency ambulance expenditures associated with the ambulance fee assessment will be reflected in the Medical Transportation

Program – Emergency Ambulance Services – Enhanced Reimbursements Rule published in the August 20, 2016 edition of the Louisiana Register.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will not have an effect on competition and employment.

Jen Steele
Medicaid Director
1608#071

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Healthcare Services Provider Fees
Hospital Fee Assessments
(LAC 48:I.4001)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4001 as authorized by R.S. 36:254. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of Management and Finance, amended and repromulgated the regulations governing provider fees for certain health care services pertaining to the administration of fees and the rights and obligations of service providers on whom such fees are imposed (*Louisiana Register*, Volume 33, Number 1). House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy and collect an assessment for each assessed hospital. In compliance with HCR 51, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing provider fees to establish hospital assessment fees and related matters.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. – D. ...

E. Reserved.

F. Hospital Services

1. Effective January 1, 2017, a hospital stabilization assessment fee shall be levied and collected in accordance with Article VII, Section 10.13 of the Constitution of Louisiana and House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature setting forth the hospital stabilization formula.

a. The total assessment for each state fiscal year shall be equal to, but shall not exceed, the lesser of the following:

i. the state portion of the cost, excluding any federal financial participation, of the reimbursement enhancements provided for in HCR 51, which are directly attributable to payments to hospitals; or

ii. one percent of the total inpatient and outpatient net patient revenue of all hospitals included in the assessment, as reported in the Medicare cost report ending in state fiscal year 2015.

2. The assessment shall be allocated to each assessed hospital on a pro rata basis by calculating the quotient of the total assessment divided by the total inpatient and outpatient hospital net patient revenue of all assessed hospitals, as reported in the Medicare cost report ending in state fiscal year (SFY) 2015, and multiplying the quotient by each assessed hospital's total inpatient and outpatient hospital net patient revenue. If a hospital was not required to file a Medicare cost report or did not file a Medicare cost report ending in SFY 2015, the hospital shall submit to the department its most applicable calendar year total of inpatient and outpatient hospital net patient revenue in a form prescribed by the department.

3. The assessment will be levied and collected on a quarterly basis and at the beginning of each quarter that the assessment is due. Prior to levying or collecting the assessment for the applicable quarterly period, the department shall publish in the *Louisiana Register* the total amount of the quarterly assessment and the corresponding percentage of total inpatient and outpatient hospital net patient revenue that will be applied to the assessed hospitals.

4. Hospitals meeting the definition of a rural hospital, as defined in R.S. 40:1189.3, shall be excluded from this assessment.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and P.L. 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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.

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, but may increase direct or indirect cost to the provider to provide the same level of service due to provider fees imposed on qualifying ground ambulance service providers. This proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the provider fees adversely impacts the provider's financial standing.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, September 29, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Healthcare Services Provider Fees— Hospital Fee Assessments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will result in a programmatic cost to the state associated with the use of provider fee revenue collections. The Medicaid Program will utilize these provider fee revenues to make additional inpatient hospital provider payments. The cost estimates will be reflected in a separate Rule at a later date. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 16-17 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 increase statutory dedicated revenue collections by approximately \$29,460,296 for FY 16-17, \$74,341,689 for FY 17-18 and \$103,301,262 for FY 18-19. In addition, it is anticipated that federal revenue collections will increase by approximately \$394,043,865 in FY 16-17, \$980,649,915 in FY 17-18 and \$1,242,702,220 in FY 18-19. It is anticipated that \$324 will be expended in FY 16-17 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule, in compliance with HCR 51, amends the provisions governing provider fees to establish hospital assessment fees. Inpatient hospital expenditures associated with the hospital fee assessment will be reflected in another Rule at a later date.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will not have an effect on competition and employment.

Jen Steele
Medicaid Director
1608#072

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Medicaid Eligibility
Medically Needy Program
(LAC 50:III.2313)

The Department of Health, Bureau of Health Services Financing hereby proposes to repeal and replace all of the Rules governing the Medically Needy Program, and to adopt LAC 50:III.2313 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule in order to reinstate the Title XIX Medically Needy Program (MNP) and to establish coverage restrictions (*Louisiana Register*, Volume 24, Number 5). All behavioral health services are restricted from coverage under the Medically Needy Program.

In February 2012, the department adopted provisions in the Medicaid Program to restructure the existing behavioral health services delivery system into a comprehensive service delivery model called the Louisiana Behavioral Health Partnership (LBHP). Certain recipients enrolled in the Medically Needy Program, whose Medicaid eligibility was based solely on the provisions of §1915(i) of Title XIX of the Social Security Act, were eligible to only receive behavioral health services. These recipients had difficulties accessing behavioral health services through the LBHP due to the service restrictions currently in place in the Medically Needy Program.

Therefore, the department promulgated an Emergency Rule which revised the provisions governing the Medically Needy Program in order to include behavioral health coverage for MNP recipients that qualified for the program under the provisions of §1915(i) of Title XIX of the Social Security Act. This Emergency Rule also repealed and replaced all of the Rules governing the Medically Needy Program in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in a codified format (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the Medically Needy Program to further clarify the provisions governing covered services (*Louisiana Register*, Volume 39, Number 4). The department promulgated an Emergency Rule which amended the provisions of the April 20, 2013 Emergency Rule in order to further clarify these provisions (*Louisiana Register*, Volume 40, Number 1). The department subsequently promulgated an Emergency Rule which amended the

provisions of the January 20, 2014 Emergency Rule in order to further clarify these provisions (*Louisiana Register*, Volume 41, Number 8). The department promulgated an Emergency Rule to amend the provisions of the August 20, 2015 Emergency Rule in order to further clarify the provisions governing allowable medical expenses for spend-down MNP coverage (*Louisiana Register*, Volume 41, Number 9).

In January 2016, the department terminated behavioral health services rendered to adults under the 1915(i) State Plan authority. Hence, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the September 20, 2015 Emergency Rule governing the Medically Needy Program coverage in order to remove references to behavioral health services provided through the Louisiana Behavioral Health Partnership to recipients that qualified for the program under the terminated 1915(i) State Plan authority (*Louisiana Register*, Volume 42, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 20, 2016 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2313. Medically Needy Program

A. The Medically Needy Program (MNP) provides Medicaid coverage when an individual's or family's income and/or resources are sufficient to meet basic needs in a categorical assistance program, but not sufficient to meet medical needs according to the MNP standards.

1. The income standard used in the MNP is the federal medically needy income eligibility standard (MNIES).

2. Resources are not applicable to modified adjusted gross income (MAGI) related MNP cases.

3. MNP eligibility cannot be considered prior to establishing income ineligibility in a categorically related assistance group.

B. MNP Eligibility Groups

1. Regular Medically Needy

a. Prior to the implementation of the MAGI income standards, parents who met all of the parent and caretaker relative (PCR) group categorical requirements and whose income was at or below the MNIES were eligible to receive regular MNP benefits. With the implementation of the MAGI-based methodology for determining income and household composition and the conversion of net income standards to MAGI equivalent income standards, individuals who would have been eligible for the regular Medically Needy Program are now eligible to receive Medicaid benefits under the parent and caretaker relative eligibility group. Regular medically needy coverage is only applicable to individuals included in the MAGI-related category of assistance.

b. Individuals in the non-MAGI [formerly aged (A-), blind (B-), or disability (D-)] related assistance groups cannot receive Regular MNP.

c. The certification period for Regular MNP cannot exceed six months.

2. Spend-Down Medically Needy

a. Spend-Down MNP is considered after establishing financial ineligibility in categorically related Medicaid programs and excess income remains. Allowable medical bills/expenses incurred by the income unit, including skilled nursing facility coinsurance expenses, are used to reduce (spend-down) the income to the allowable MNP limits.

b. The following individuals may be considered for spend-down MNP:

i. individuals who meet all of the parent and caretaker relative group requirements;

ii. non-institutionalized individuals (non-MAGI related); and

iii. institutionalized individuals or couples (non-MAGI related) with Medicare co-insurance whose income has been spent down.

c. The certification period for spend-down MNP begins no earlier than the spend-down date and shall not exceed three months.

3. Long Term Care (LTC) Spend-Down MNP

a. Individuals residing in Medicaid LTC facilities, not on Medicare-coinsurance with resources within the limits, but whose income exceeds the special income limits (three times the current federal benefit rate), are eligible for LTC Spend-Down MNP.

C. The following services are covered in the Medically Needy Program:

1. inpatient and outpatient hospital services;
2. intermediate care facilities for persons with intellectual disabilities (ICF/ID) services;
3. intermediate care and skilled nursing facility (ICF and SNF) services;
4. physician services, including medical/surgical services by a dentist;
5. nurse midwife services;
6. certified registered nurse anesthetist (CRNA) and anesthesiologist services;
7. laboratory and x-ray services;
8. prescription drugs;
9. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services;
10. rural health clinic services;
11. hemodialysis clinic services;
12. ambulatory surgical center services;
13. prenatal clinic services;
14. federally qualified health center services;
15. family planning services;
16. durable medical equipment;
17. rehabilitation services (physical therapy, occupational therapy, speech therapy);
18. nurse practitioner services;
19. medical transportation services (emergency and non-emergency);
20. home health services for individuals needing skilled nursing services;
21. chiropractic services;
22. optometry services;
23. podiatry services;
24. radiation therapy; and
25. behavioral health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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.

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, September 29, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility—Medically Needy Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 16-17. It is anticipated that \$972 (\$486 SGF and \$486 FED) will be expended in FY 16-17 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 other than the federal share of the promulgation costs for FY 16-17. It is anticipated that \$486 will be collected in FY 16-17 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule continues the provisions of the August 20, 2016 Emergency Rule which amended the provisions of the September 20, 2015 Emergency Rule governing the Medically Needy Program (MNP) in order to repromulgate these provisions for inclusion in the Louisiana Administrative Code (LAC), and to remove references to behavioral health services provided to MNP recipients that qualified under the now terminated 1915(i) State Plan authority. The fiscal impact of the 1915(i) program termination was included in an October 2015 Notice of Intent. It is anticipated that implementation of this proposed Rule will have no fiscal impact to the Medicaid program for FY 16-17, FY 17-18 and FY 18-19 since these changes are solely to meet the technical requirements of codifying these provisions in the LAC.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1608#073

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medical Transportation Program
Emergency Ambulance Services
Enhanced Reimbursements
(LAC 50:XXVII.331)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XXVII.331 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 305 of the 2016 Regular Legislative Session directed the Department of Health to provide enhanced reimbursements to qualified providers of emergency ground ambulance services that are assessed a provider fee.

In order to comply with the requirements of Act 305, the department promulgated an Emergency Rule which adopted provisions to establish enhanced Medicaid reimbursements through the Supplemental Payment Program for qualifying emergency ground ambulance service providers (*Louisiana Register*, Volume 42, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2016 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

**§331. Enhanced Reimbursements for Qualifying
Emergency Ground Ambulance Service
Providers**

A. Effective for dates of service on or after August 1, 2016, qualifying emergency ambulance service providers assessed a fee as outlined in LAC 48.I.4001.E.1.a-d shall receive enhanced reimbursement for emergency ground ambulance transportation services rendered during the quarter through the Supplemental Payment Program described in Louisiana Medicaid State Plan Amendment Transmittal Number 11-23.

B. Calculation of Average Commercial Rate.

1. The enhanced reimbursement shall be determined in a manner to bring the payments for these services up to the average commercial rate level as described in Subparagraph C.3.h. The average commercial rate level is defined as the average amount payable by the commercial payers for the same service.

2. The department shall align the paid Medicaid claims with the Medicare fees for each healthcare common procedure coding system (HCPCS) or current procedure terminology (CPT) code for the ambulance provider and calculate the Medicare payment for those claims.

3. The department shall calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims.

4. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

C. Payment Methodology.

1. The enhanced reimbursement to each qualifying emergency ground ambulance service provider shall not exceed the sum of the difference between the Medicaid payments otherwise made to these providers for the provision of emergency ground ambulance transportation services and the average amount that would have been paid at the equivalent community rate.

2. The enhanced reimbursement shall be determined in a manner to bring payments for these services up to the community rate level.

a. *Community Rate*-the average amount payable by commercial insurers for the same services.

3. The specific methodology to be used in establishing the enhanced reimbursement payment for ambulance providers is as follows:

a. The department shall identify Medicaid ambulance service providers that qualify to receive enhanced reimbursement Medicaid payments for the provision of emergency ground ambulance transportation services.

b. For each Medicaid ambulance service provider identified to receive enhanced reimbursement Medicaid payments, the department shall identify the emergency ground ambulance transportation services for which the provider is eligible to be reimbursed.

c. For each Medicaid ambulance service provider described in Subparagraph C.3.a. of this Section, the department shall calculate the reimbursement paid to the provider for the provision of emergency ground ambulance transportation services identified under Subparagraph C.3.b. of this Section.

d. For each Medicaid ambulance service provider described in Subparagraph C.3.a. of this Section, the department shall calculate the provider's equivalent community rate for each of the provider's services identified under Subparagraph C.3.b. of this Section.

e. For each Medicaid ambulance service provider described in Subparagraph C.3.a. of this Section, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency ground ambulance transportation services under Subparagraph C.3.c. of this Section from an amount equal to the amount calculated for each of the emergency ground ambulance transportation services under Subparagraph C.3.d. of this Section.

f. For each Medicaid ambulance service provider described in Subparagraph C.3.a. of this Section, the department shall calculate the sum of each of the amounts calculated for emergency ground ambulance transportation services under Subparagraph C.3.e. of this Section.

g. For each Medicaid ambulance service provider described in Subparagraph C.3.a. of this Section, the department shall calculate each provider's upper payment limit by totaling the provider's total Medicaid payment differential from Subparagraph C.3.f. of this Section.

h. The department shall reimburse providers identified in Subparagraph C.3.a. of this Section up to 100 percent of the provider's average commercial rate.

D. Effective Date of Payment.

1. The enhanced reimbursement payment shall be made effective for emergency ground ambulance transportation services provided on or after August 1, 2016. This payment is based on the average amount that would have been paid at the equivalent community rate.

2. After the initial calculation for fiscal year 2015-2016, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually but shall be made no less than every three years.

E. Maximum Payment.

1. The total maximum amount to be paid by the department to any individually qualified Medicaid ambulance service provider for enhanced reimbursement Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under Subparagraph C.3.f. of this Section

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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 no impact on family

functioning, stability and autonomy as described in R.S. 49:972.

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.

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, but may reduce the total direct or indirect cost to the provider to provide the same level of service and enhance the provider's ability to provide the same level of service since this proposed Rule increases payments to qualifying emergency ambulance service providers.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, September 29, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Medical Transportation Program
Emergency Ambulance Services
Enhanced Reimbursements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic cost of \$2,092,469 for FY 16-17, \$3,138,137 for FY 17-18 and \$3,138,137 for FY 18-19. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 16-17 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.26 percent in FY 16-17 and 62.45 percent in FY 17-18.

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

It is anticipated that the implementation of this proposed rule will increase statutory dedicated revenue collections by approximately \$2,092,091 for FY 16-17, \$3,138,137 for FY 17-18 and \$3,138,137 for FY 18-19. In addition, it is anticipated

that federal revenue collections will increase by approximately \$3,451,718 for FY 16-17, \$5,177,011 for FY 17-18 and \$5,177,011 for FY 18-19. It is anticipated that \$378 will be expended in FY 16-17 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.26 percent in FY 16-17 and 62.45 percent in FY 17-18.

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

This proposed Rule continues the provisions of the August 1, 2016 Emergency Rule which adopts provisions to establish enhanced Medicaid reimbursements through the Supplemental Payment Program for qualifying emergency ground ambulance service providers. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medical Transportation Program by approximately \$5,543,431 for FY 16-17, \$8,315,148 for FY 17-18 and \$8,315,148 for FY 18-19.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Jen Steele
Medicaid Director
1608#074

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Nursing Facilities—Licensing Standards (LAC 48:I.Chapters 97-99)

The Department of Health, Bureau of Health Services Financing proposes to repeal and replace LAC 48:I.Chapters 97-99 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 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.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the sanctions and appeals provisions from the nursing facilities licensing standards since these provisions are now incorporated into the Health Care Facility Rule promulgated in Part I, Chapter 46 of Title 48. (*Louisiana Register*, Volume 39, Number 11).

The department now proposes to repeal and replace the licensing standards governing nursing facilities in its entirety and repromulgate these provisions in order to include provisions related to the culture change movement in nursing facilities and to incorporate these provisions under a single comprehensive Rule in Part I, Title 48 of the *Louisiana Administrative Code*.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter A. General Provisions

§9701. Definitions

Abuse—the willful infliction of injury or the causing of the deterioration of a resident by means including, but not limited to, physical, verbal, emotional, psychological, sexual

abuse, exploitation, or extortion of funds or other things of value to such an extent that the resident's health, moral, or emotional well-being is endangered.

1. The determination of abuse shall not be mitigated by a resident's age, ability to comprehend or disability. Abuse determination shall be based on the reasonable person concept.

Administrator—any individual who is or may be charged with the general administration of a nursing facility and who has been licensed and registered by the Board of Examiners of Nursing Home Administrators in accordance with the provisions of Louisiana Revised Statute 37:2501.

Advanced Practice Registered Nurse (APRN)—a licensed registered nurse who is certified by a nationally recognized certifying body as having an advanced nursing specialty and who meets the criteria for an advanced practice registered nurse as established by the Louisiana State Board of Nursing. An advanced practice registered nurse shall include:

1. certified nurse midwife;
2. certified registered nurse anesthetist;
3. clinical nurse specialist; or
4. nurse practitioner.

Alzheimer's Special Care Unit—any nursing facility as defined in R.S. 40:2009.2, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the nursing facility as providing specialized Alzheimer/dementia care services.

Ancillary Service—a service such as, but not limited to:

1. podiatry;
2. dental;
3. audiology;
4. vision;
5. physical therapy;
6. speech pathology;
7. occupational therapy
8. psychological; and
9. social services.

Applicant—the legal entity that applies for the license to open, conduct, manage or maintain a nursing facility.

Biological—a preparation used in the treatment or prevention of disease that is derived from living organisms or their by-product.

Change of Information (CHOI)—any change in facility information required by regulation or statute to be submitted to the department that does not change the ownership structure and/or respective ownership interests held by stakeholders of the current legal entity.

Change of Ownership (CHOW)—any change in the legal entity responsible for the operation of the nursing facility. Management agreements are generally not changes of ownership if the former owner continues to retain policy responsibility and approve or concur in decisions involving the nursing facility's operation. However, if these ultimate legal responsibilities, authorities and liabilities are surrendered and transferred from the former owner to the new manager, then a change of ownership has occurred. Examples of actions that constitute a change of ownership include, but are not limited to:

1. unincorporated sole proprietorship—transfer of title and property of another party constitutes change of ownership;

2. corporation—the merger of the provider’s corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation, constitutes change of ownership:

a. transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute a change of ownership. Admission of a new member to a nonprofit corporation is not a change of ownership;

3. limited liability company—the removal, addition or substitution of a member in a limited liability company does not constitute a change of ownership; or

4. partnership—in the case of a partnership, the removal, addition or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable state law, constitutes a change of ownership.

Charge Nurse—an individual who is licensed by the State of Louisiana to practice as an RN or LPN and designated as a charge nurse by the nursing facility.

Chemical Restraint—a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

Controlled Dangerous Substance—a drug, substance or immediate precursor in Schedule I through V of R. S. 40:964.

Culture Change—the common name given to the national movement for the transformation of older adult services, based on person-directed values and practices where the voices of elders and those working with them are considered and respected. Core person-directed values are:

1. choice;
2. dignity;
3. respect;
4. self-determination; and
5. purposeful living.

Designated Contact—resident’s legal representative or interested family member.

Dietary Manager—a person who:

1. is a licensed dietitian;
2. is a graduate of a dietetic technician program;
3. has successfully completed a course of study, by correspondence or classroom, which meets the eligibility requirements for certification by the Dietary Manager's Association;
4. has successfully completed a training course at a state approved school (vocational or university) which includes course work in foods, food service supervision and diet therapy. Documentation of an eight-hour course of formalized instruction in diet therapy conducted by the employing nursing facility's qualified dietitian is permissible if the course meets only the foods and food service supervision requirements; or
5. is currently enrolled in an acceptable course of not more than 12 months which will qualify an individual upon completion.

Director of Nursing (DON)—a registered nurse, licensed by the State of Louisiana, who directs and coordinates nursing services in a nursing facility.

Drug Administration—an act in which a single dose of a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such acts. The complete act of administration entails:

1. removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container);
2. verifying the dose with the physician's orders;
3. giving the individual dose to the proper resident;
4. monitoring the ingestion of the dose; and
5. promptly recording the time and dose given.

Drug Dispensing—an act which entails the interpretation of an order for a drug or biological and, pursuant to the order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological for a resident or for a service unit of the nursing facility by a licensed pharmacist, physician or dentist.

Legal Representative—a resident’s legal guardian or other responsible person as determined by the specific legally recognized status of the relationship (e.g., full interdiction, partial interdiction, continuing tutorship, competent major, or other legally recognized status).

Licensed Bed—a bed set up, or capable of being set up, within 24 hours in a nursing facility for the use of one resident.

Licensed Dietitian—a dietitian who is licensed to practice by the Louisiana Board of Examiners in Dietetics and Nutrition.

Licensed Practical Nurse (LPN)—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana.

Locked Unit or Specialized Care Unit—a restricted section or area of the nursing facility which limits free access of residents suffering from severe dementia, Alzheimer’s or other disease process or condition which severely impairs their ability to recognize potential hazards. Such units shall not be established for the sole purpose of housing individuals with mental illness.

Louisiana Department of Health (LDH)—the ‘department’, previously known as the Department of Health and Hospitals or DHH.

LSC Appeal—equivalent method of compliance related to *Life Safety Code (LSC)* requirements for participation, granted or approved by state and/or federal certification agencies.

Major Alteration—any repair or replacement of building materials and equipment which does not meet the definition of minor alteration.

Medication Attendant Certified (MAC)—a person certified by LDH to administer medications to nursing facility residents.

Medical Director—a physician licensed in Louisiana who directs and coordinates medical care in a nursing facility.

Minor Alteration—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction below that which existed prior to the alteration. This does not include any alteration to the function or original design of the construction.

Misappropriation—taking possession of a resident’s personal belongings without the resident’s permission to do

so, or the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

Neglect—the failure to provide the proper or necessary medical care, nutrition or other care necessary for a resident's well-being, unless the resident exercises his/her right to refuse the necessary care.

Nursing Facility—any private home, institution, building, residence or other place, serving two or more persons who are not related by blood or marriage to the operator, whether operated for profit or not, and including those places operated by a political subdivision of the State of Louisiana which undertakes, through its ownership or management, to provide maintenance, personal care, or nursing services for persons who, by reason of illness or physical infirmity or age, are unable to properly care for themselves. The term does not include the following:

1. a home, institution or other place operated by the federal government or agency thereof, or by the State of Louisiana;

2. a hospital, sanitarium or other medical institution whose principal activity or business is the care and treatment of persons suffering from tuberculosis or from mental diseases;

3. a hospital, sanitarium or other medical institution whose principal activity or business is the diagnosis, care and treatment of human illness through the maintenance and operation of organized facilities;

4. any municipal, parish or private child welfare agency, maternity hospital or lying-in home required by law to be licensed by some department or agency;

5. any sanitarium or institution conducted by and for Christian Scientists who rely on the practice of Christian Science for treatment and healing;

6. any nonprofit congregate housing program which promotes independent living by providing assistance with daily living activities such as cooking, eating, dressing, getting out of bed and the like to persons living in a shared group environment who do not require the medical supervision and nursing assistance provided by nursing facilities. No congregate housing program, except those licensed or operated by the State of Louisiana, shall:

- a. use the term "nursing facility" or any other term implying that it is a licensed health care facility; or

- b. administer medications or otherwise provide any other nursing or medical service; or

7. any adult residential care facility.

Physical Restraint—any physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

Physician—an individual currently licensed by the Louisiana State Board of Medical Examiners to practice medicine and/or surgery in Louisiana.

Physician Assistant—a person who is a graduate of a program accredited by the Council on Medical Education of the American Medical Association or its successors, or who has successfully passed the national certificate examination administered by the National Commission on the Certification of Physicians' Assistants, or its predecessors, and who is approved and licensed by the Louisiana Board of Medical Examiners to perform protocol services under the

supervision of a physician or group of physicians approved by the board to supervise such assistant.

Reasonable Person Concept—the degree of actual or potential harm one would expect a reasonable person in a similar situation to suffer as a result of alleged abuse, neglect or misappropriation of a resident's funds.

Registered Nurse (RN)—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

Registered Pharmacist—an individual currently licensed by the Louisiana Board of Pharmacy to practice pharmacy in Louisiana.

Resident—an individual admitted to the nursing facility by, and upon, the recommendation of a physician, and who is to receive the medical and nursing care ordered by the physician.

Resident Activities Director—an individual responsible for directing or providing the activity services of a nursing facility.

Resident Communication System—a system that registers calls electronically from its place of origin (the resident's bed, toilet or bathing facility) to the place of receivership.

Restorative Care—activities designed to resolve, diminish or prevent the needs that are inferred from the resident's problem; includes the planning, implementation and evaluation of said activities.

Sheltering in Place—the election to stay in place rather than evacuate when an executive order or proclamation of emergency or disaster is issued for the parish in which the nursing facility is located and a voluntary or mandatory evacuation has been declared for its geographic location.

Social Service Designee—an individual responsible for arranging or directly providing medically-related social services in the facility to assist in attaining and maintaining the highest practicable physical, mental, and psychosocial well-being of each resident.

Specialized Mental Health Services—for the purposes of pre-admission screening and resident review (PASRR), specialized services means any service or support recommended by an individualized level II determination that a particular nursing facility resident requires due to mental illness, intellectual disability or related condition, that supplements the scope of services that the nursing facility must provide under reimbursement as nursing facility services.

Specialized Rehabilitative Services—include, but are not limited to:

1. physical therapy;
2. speech language pathology;
3. occupational therapy; and
4. mental health rehabilitative services.

Sponsor—an adult relative, friend or guardian of a resident who has an interest or responsibility in the resident's welfare.

State Fire Marshal (OSFM)—Louisiana Department of Public Safety and Corrections, Office of the State Fire Marshal.

Written Notification—notification in hard copy or electronic format.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9703. Licensing Process

A. All nursing facilities shall be licensed by the department. It shall be unlawful to operate a nursing facility without possessing a current, valid license issued by the department. The department is the only licensing authority for nursing facilities in Louisiana. Each nursing facility shall be separately licensed.

B. An institution that is primarily for the care and treatment of mental diseases cannot be a skilled nursing facility or nursing facility.

C. A nursing facility shall be in compliance with all required federal, state and local statutes, laws, ordinances, rules, regulations and fees.

D. A nursing facility license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the nursing facility to which it is issued and only for the specific geographical address of that nursing facility;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, modified or terminated prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the nursing facility;
5. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

E. A separately licensed nursing facility shall not use a name which is substantially the same as the name of another such nursing facility licensed by the department, unless such nursing facility is under common ownership with other nursing facilities.

F. No branches, satellite locations or offsite campuses shall be authorized for a nursing facility.

G. No new nursing facility shall accept residents until the nursing facility has written approval and/or a license issued by the department.

H. Notice of Fees. Fees shall be required for:

1. a replacement license for changes such as:
 - a. name;
 - b. address; or
 - c. bed capacity;
2. a duplicate license; and
3. a change in licensee or premises.

I. Plan Review. Construction documents (plans and specifications), plan review application and applicable plan review fees as established by the Office of State Fire Marshal (OSFM) are required to be submitted, reviewed and found to be acceptable for licensure by the OSFM as part of the licensing procedure prior to obtaining an initial license.

J. Construction Document Preparation. Construction documents shall be submitted to OSFM in accordance with OSFM requirements.

K. Any increase in licensed bed capacity requires facility need review approval (FNR) and a plan review, as applicable by state law.

L. LSC Appeal Request Equivalent Methods of Compliance. OSFM may accept equivalent methods of

compliance with the physical environment provisions of these rules in consultation with LDH.

1. If a *Life Safety Code (LSC)* appeal is requested, the nursing facility shall:

- a. submit the LSC appeal request and applicable fees as established by OSFM to OSFM;
- b. demonstrate how patient safety and quality of care offered is not compromised by the LSC appeal request;
- c. demonstrate the undue hardship imposed on the nursing facility if the LSC appeal request is not granted; and
- d. demonstrate its ability to completely fulfill all other requirements of service.

2. The OSFM will make a written determination of the requests.

a. LSC appeal request determinations are subject to review in any change in circumstance and are subject to review or revocation upon any change in circumstances related to the LSC appeal determination.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9705. Initial Licensing Application Process

A. An initial application for licensing as a nursing facility shall be obtained from the department. A completed initial license application packet for a nursing facility shall be submitted to and approved by the department prior to an applicant providing nursing facility services. The completed initial licensing application packet shall include:

1. a completed nursing facility licensure application and the non-refundable licensing fee as established by statute. All fees shall be submitted by certified or company check or U.S. Postal money order only, made payable to the department. All state owned nursing facilities are exempt from fees;
2. a copy of the released architectural plan review project report for the nursing facility from OSFM;
3. a copy of the on-site inspection report with determination as acceptable for occupancy by OSFM;
4. a copy of the health inspection report with approval of occupancy from the Office of Public Health (OPH);
5. a disclosure of the name and address of all individuals with 5 percent or more ownership interest, and in the instance where the nursing facility is a corporation or partnership, the name and address of each officer or director, and board members;
6. a disclosure of the name of the management firm and employer identification number, or the name of the lessor organization, if the nursing facility is operated by a management company or leased in whole or in part by another organization;
7. if applicable, clinical laboratory improvement amendments (CLIA) certificate or CLIA certificate of waiver;
8. a floor sketch or drawing of the premises to be licensed; and
9. any other documentation or information required by the department for licensure.

B. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of the

notification to submit the additionally requested information. If the additionally requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a nursing facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

C. Once the initial licensing application packet has been approved by the department, notification of the approval shall be forwarded to the applicant. Within 90 days of receipt of the approval notification, the applicant must notify the department that the nursing facility is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application has been closed, an applicant who is still interested in becoming a nursing facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

D. Applicants shall be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the nursing facility will be issued an initial license to operate.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9707. Types of Licenses

A. The department shall have the authority to issue the following types of licenses:

1. Full Initial License. The department shall issue a full license to the nursing facility when the initial licensing survey finds that the nursing facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations and fees. The initial license shall specify the capacity of the nursing facility. The license shall be valid for a period of 12 months unless the license is modified, revoked, suspended, or terminated.

2. Provisional Initial License. The department may issue a provisional initial license to the nursing facility when the initial licensing survey finds that the nursing facility is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, Rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the residents or participants. The provisional license shall be valid for a period not to exceed six months.

a. At the discretion of the department, the provisional initial license may be extended for an additional period not to exceed 90 days in order for the nursing facility to correct the noncompliance or deficiencies.

b. The nursing facility shall submit a plan of correction to the department for approval and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional initial license.

c. A follow-up survey shall be conducted prior to the expiration of the provisional initial license.

i. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, a full license may be issued.

ii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional initial license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee if no timely informal reconsideration or administrative appeal of the deficiencies is filed pursuant to this Chapter.

3. Annual Renewal License. The department may issue a full license that is annually renewed to an existing licensed nursing facility, which is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations.

a. The nursing facility shall submit:

i. a completed application;

ii. appropriate fees; and

iii. any other documentation or information that is required by the department for license renewal.

b. The license shall be valid for a period of 12 months unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department, in its sole discretion, may issue a provisional license to an existing licensed nursing facility for a period not to exceed six months.

a. At the discretion of the department, the provisional license may be extended for an additional period not to exceed 90 days in order for the nursing facility to correct the noncompliance or deficiencies.

b. When the department issues a provisional license to an existing licensed nursing facility, the provider shall submit a plan of correction to the department for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

c. The department shall conduct an on-site follow-up survey at the nursing facility prior to the expiration of the provisional license.

i. If the on-site follow-up survey determines that the nursing facility has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the nursing facility license.

ii. If the on-site follow-up survey determines that the nursing facility has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee if no timely informal reconsideration or administrative appeal of the deficiencies is filed pursuant to this Chapter.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9709. Changes in Licensee Information

A. Any change regarding the nursing facility name, "doing business as" name, mailing address, phone number or any combination thereof, shall be reported in writing to the department within five days of the change. Any change regarding the nursing facility name or "doing business as"

name requires a change to the nursing facility license and shall require the appropriate fee for the issuance of an amended license.

B. A change of ownership (CHOW) of the nursing facility shall be reported in writing to the department at least five days prior to the change of ownership.

1. The license of a nursing facility is not transferable or assignable. The license cannot be sold.

2. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all of the application requirements are completed and approved by the department, a new license shall be issued to the new owner.

3. A nursing facility that is under license revocation, provisional licensure or denial of license renewal may not undergo a CHOW.

C. Any request for a duplicate license shall be accompanied by the appropriate fee.

D. A nursing facility that intends to change the physical address of its geographic location is required to have OSFM approval for plan review and approval for occupancy of the new location, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the occupancy of the new location to be licensed.

1. Written notice of intent to relocate shall be submitted to HSS at the time plan review request is submitted to OSFM.

2. Relocation of the nursing facility's physical address results in a new anniversary date and the full licensing fee shall be paid.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9711. Renewal of License

A. To renew a license, a nursing facility shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The licensure application packet shall include:

1. the license renewal application;
2. a copy of the current onsite inspection report with approval of occupancy from OSFM and the Office of Public Health;
3. the licensure renewal fee; and
4. any other documentation required by the department.

B. the department may perform an onsite survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the nursing facility license.

D. The renewal of a license does not in any manner affect any sanction, civil fine, or other action imposed by the department imposed against the nursing facility.

E. If an existing licensed nursing facility has been issued a notice of license revocation, suspension, or termination, and the nursing facility license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9713. Licensing Surveys

A. Prior to the initial license being issued to the nursing facility, an initial licensing survey shall be conducted on-site at the nursing facility to assure compliance with licensing standards. The nursing facility shall not provide services to any resident until the initial licensing survey has been performed and the nursing facility found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

B. Once an initial license has been issued, the department may conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations and fees. These surveys shall be unannounced.

C. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices. The department shall issue written notice to the provider of the results of the follow-up survey.

D. An acceptable plan of correction shall be required for any survey where deficiencies have been cited.

E. If deficiencies have been cited during a licensing survey, the department may issue appropriate sanctions, including but not limited to:

1. civil fines;
2. directed plans of correction;
3. denial of license renewal;
4. provisional licensure;
5. license revocation; or
6. any other sanctions or actions authorized under state law or regulation.

F. Surveyors and staff, on behalf of the department, shall be:

1. given access to all areas of the nursing facility and all relevant files during any licensing survey or other survey; and
2. allowed to interview any facility staff, resident, or participant as necessary to conduct the survey.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9715. Statement of Deficiencies

A. Notice to nursing facility of statement of deficiencies. When the department has reasonable cause to believe through an on-site survey, a complaint investigation, or other means that there exists or has existed a threat to the health, safety, welfare or rights of a nursing facility resident, the department shall give written notice of the deficiencies.

B. The survey team shall conduct an exit conference and give the nursing facility administrator or his/her designee the preliminary finding of fact and the possible deficiencies before leaving the nursing facility.

C. The department shall send confirmed written notice to the nursing facility administrator.

D. The department's written notice of deficiencies shall be consistent with the findings delineated at the conference and shall:

1. specify the deficiencies;

2. cite the legal authority which established such deficiencies; and

3. inform the administrator that the nursing facility has 10 calendar days from receipt of written notice within which to request a reconsideration of the proposed agency action.

E. Any statement of deficiencies issued by the department to the nursing facility shall be posted in a conspicuous place on the licensed premises.

F. In accordance with R.S. 40:2010.10., all nursing facilities shall provide notification to the applicant during the admission process that the applicant may receive a copy of the annual licensing survey as well as the telephone number to report complaints, and the applicant shall sign stating they have been so notified.

G. Any statement of deficiencies issued by the department to a nursing facility shall be available for disclosure to the public 14 days following the date the statement of deficiency is made available to the nursing facility.

H. Unless otherwise provided in statute or in this licensing rule, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The provider's written request for informal reconsideration shall be considered timely if received within 10 calendar days of facility's receipt of the statement of deficiencies.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section.

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.13, et seq., and as provided for license denials, revocations, and denial of license renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

5. The provider shall be notified in writing of the results of the informal reconsideration.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9717. Initial License Denial, Revocation or Denial of Renewal of License

A. The department also may deny, suspend or revoke a license where there has been substantial noncompliance with these requirements in accordance with R.S. 40:2009.1, et seq., the Nursing Home Licensing Law. If a license is denied, suspended, or revoked, an appeal may be requested.

B. The department may deny an application for a license, may deny a license renewal or may revoke a license in accordance with the provisions of the Administrative Procedure Act.

C. Denial of an Initial License. The department may deny an initial license in the event that the initial licensing survey finds that the nursing facility is noncompliant with any licensing laws or regulations that present a potential threat to the health, safety, or welfare of the residents.

1. The department shall deny an initial license in the event that the initial licensing survey finds that the nursing facility is noncompliant with any other required statutes, laws, ordinances, rules or regulations that present a potential threat to the health, safety or welfare of the residents.

2. The department shall deny an initial license for any of the reasons in this Rule that a license may be revoked or non-renewed.

D. Voluntary Non-Renewal of a License. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

E. Revocation of License or Denial of License Renewal. A nursing facility license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the nursing facility licensing laws, rules and regulations;

2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules, or regulations;

3. failure to be in substantial compliance with the terms and provisions of a settlement agreement;

4. failure to uphold resident rights whereby deficient practices may result in harm, injury, or death of a resident;

5. failure to protect a resident from a harmful act of an employee or other resident including, but not limited to:

a. abuse, neglect, exploitation, or extortion;

b. any action posing a threat to a resident's health and safety;

c. coercion;

d. threat or intimidation; or

e. harassment;

6. failure to notify the proper authorities of all suspected cases of neglect, criminal activity, mental or physical abuse, or any combination thereof;

7. knowingly making a false statement, or providing false, forged or altered information or documentation to LDH employees or to law enforcement in any of the following areas, including but not limited to:

a. application for initial license or renewal of license; or

b. matters under investigation by the department or the Office of the Attorney General;

8. the use of false, fraudulent or misleading advertising;

9. fraudulent operation of a nursing facility by the owner, administrator or manager;

10. an owner, officer, member, manager, administrator or person designated to manage or supervise participant care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court;

a. for purposes of this paragraph, conviction of a felony means a felony relating to the violence, abuse, or negligence of a person, or a felony relating to the misappropriation of property belonging to another person;

11. failure to comply with all reporting requirements in a timely manner as required by the department;

12. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview facility

staff or residents individually as necessary to conduct the survey;

13. failure to allow or refusal to allow access to records by personnel authorized by LDH; or

14. bribery, harassment, or intimidation of any residents designed to cause that resident to use the services of any particular nursing facility.

F. In the event a nursing facility license is revoked or renewal is denied any owner, officer, member, manager, director or administrator of such nursing facility may be prohibited from owning, managing, directing or operating another nursing facility for a period of two years from the date of the final disposition of the revocation or denial action.

1. For any of the above positions affected by employment prohibitions, the department shall consider the involvement, responsibilities and authority of the individual(s) affected by such employment prohibition, as well as associated circumstances involving license revocation or denial of license renewal.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9719. Notice and Appeal of Initial License Denial, License Revocation and Denial of License Renewal

A. Notice of an initial license denial, license revocation or denial of license renewal shall be given to the provider in writing.

B. The provider has a right to an informal reconsideration of the initial license denial, license revocation, or denial of license renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The provider's request for informal reconsideration shall be considered timely if received within 15 calendar days of the notice of the initial license denial, license revocation, or denial of license renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the provider will receive written notification.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the initial license denial, revocation or denial of license renewal shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The provider has a right to an administrative appeal of the initial license denial, license revocation, or denial of license renewal.

1. The provider shall request the administrative appeal within 30 days of the receipt of the results of the informal reconsideration. The provider may forego its rights to an informal reconsideration, and if so, the provider shall request the administrative appeal within 30 days of the receipt of the notice of the initial license denial, license revocation, or denial of license renewal. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law (DAL).

2. The request for administrative appeal shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the DAL, the administrative appeal of the license revocation or denial of license renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department, or his/her designee, determines that the violations of the nursing facility pose an imminent or immediate threat to the health, welfare or safety of a participant, the imposition of the license revocation or denial of license renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the nursing facility shall be notified in writing.

4. Correction of a violation or a deficiency which is the basis for the initial license denial, revocation or denial of license renewal, shall not be a basis for the administrative appeal.

D. If an existing licensed provider has been issued a notice of license revocation and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the provider on an initial license denial, denial of license renewal, or license revocation, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

1. If the final decision is to reverse the initial license denial, the denial of license renewal, or the license revocation, the provider's license will be re-instated or granted upon the payment of any licensing or other fees due to the department.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new provider. An existing provider who has been issued a provisional license remains licensed and operational and also has no right to an informal reconsideration or an administrative appeal of the issuance of the provisional license. The issuance of a provisional license to an existing provider is not considered to be a denial of initial licensure, a denial of license renewal, or a license revocation.

1. A follow-up survey shall be conducted prior to the expiration of a provisional initial license to a new provider or the expiration of a provisional license to an existing provider.

2. A new provider that is issued a provisional initial license or an existing provider that is issued a provisional license shall be required to correct all noncompliance or deficiencies at the time the follow-up survey is conducted.

3. If all noncompliance or deficiencies have not been corrected at the time of the follow-up survey, or if new deficiencies that are a threat to the health, safety, or welfare of residents are cited on the follow-up survey, the provisional initial license or provisional license shall expire on its face.

4. The department shall issue written notice to the provider of the results of the follow-up survey.

5. A provider with a provisional initial license or an existing provider with a provisional license who has deficiencies cited at the follow-up survey shall have the right to an informal reconsideration and the right to an administrative appeal of the deficiencies cited at the follow up survey.

a. The correction of a violation, noncompliance or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

b. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

c. The facility's written request for informal reconsideration shall be considered timely if received within five calendar days of the notice of the results of the follow-up survey from the department.

d. The provider shall request the administrative appeal within 15 calendar days of the notice of the results of the follow-up survey from the department.

e. The provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this section shall cease providing services unless the DAL issues a stay of the expiration. The stay shall only be granted by the DAL in accordance with the Administrative Procedure Act.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9721. Cessation of Business

A. Except as provided in Section §9767.K-M of these licensing regulations, a license shall be immediately null and void if a facility ceases to operate.

B. A cessation of business is deemed to be effective the date on which the nursing facility stopped offering or providing services to the community.

C. Upon the cessation of business, the nursing facility shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the nursing facility. The provider does not have a right to appeal a cessation of business.

E. The nursing facility shall notify the department in writing 30 days prior to the effective date of the closure or cessation. In addition to the notice, the provider shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure.;

2. provisions that comply with federal and state laws on storage, maintenance, access and confidentiality of the closed provider's patients medical records;

3. an appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction; and

4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing nursing facility, at least 15 days prior to the effective date of closure.

F. Failure to comply with the provisions concerning submission of a written plan for the disposition of patient medical records to the department may result in the provider being prohibited from obtaining a license for any provider type issued by the department.

G. Once the nursing facility has ceased doing business, the nursing facility shall not provide services until the provider has obtained a new initial license.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9723. Complaint Process

A. Any person who has knowledge of any of the following circumstances that could affect the health and well-being of a nursing facility resident may submit a complaint regarding the matter in writing or by telephone to the Louisiana Department of Health, Health Standards Section:

1. the alleged abuse or neglect of a nursing facility resident;

2. violation of any state law, licensing rule or regulation, or federal certification rule pertaining to a nursing facility; or

3. that a nursing facility resident is not receiving the care and treatment to which he is entitled under state or federal laws.

B. Prohibition Against Retaliation. No discriminatory or retaliatory action shall be taken by a nursing facility against any person or resident who provides information to the department or any other governmental agency, provided the communication was made for the purpose of aiding the department in carrying out its duties and responsibilities.

1. Any person, who in good faith, submits a complaint pursuant to this Section, shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

C. Notice of Complaint Procedure. Notices of how to lodge a complaint with the department, the Office of Civil Rights, the Americans with Disabilities Act, and/or the Medicaid Fraud Control Unit shall be posted conspicuously in the nursing facility in an area accessible to residents. The notices shall include the addresses and toll-free complaint telephone numbers for the Health Standards Section (HSS) and other governmental agencies.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9725. Complaint Surveys

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13, et seq.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction shall be submitted to the department for any complaint survey where deficiencies have been cited.

D. An on-site follow-up survey or a desk review may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices.

E. For deficiencies cited for non-compliance with any complaint survey, the department may issue appropriate sanctions, including but not limited to:

1. civil fines;
2. directed plans of correction;
3. denial of license renewal;
4. provisional licensure;
5. license revocation; or
6. any other sanctions or actions authorized under state law or regulation.

F. LDH surveyors and staff shall be given access to all areas of the nursing facility and all relevant files during any complaint survey. LDH surveyors and staff shall be allowed to interview any facility staff or resident, as necessary or required to conduct the survey.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9727. Incident Reporting Requirements

A. A nursing facility shall have written procedures for the reporting and documentation of actual and suspected incidents of abuse, neglect, misappropriation of property/funds and suspicious death. Major injuries of unknown origin (e. g., fractures, burns, suspicious contusions, head injuries, etc.) for which the nursing facility is unable to determine the cause and could possibly be the result of abuse or neglect shall also be reported. Such procedures shall ensure that:

1. a resident is protected from harm during an investigation;
2. immediate verbal reporting is made and a preliminary written report within 24 hours of the incident is submitted to the administrator or his/her designee;
3. notification, as required by HSS, is submitted to HSS within 24 hours of occurrence or discovery of the incident. The nursing facility shall utilize the LDH Online Tracking Incident System (OTIS) or current LDH required database reporting system to provide notification;

NOTE: the nursing facility is required to maintain internet access and to keep the department informed of an active e-mail address at all times.

4. appropriate authorities are to be notified according to state law;
5. immediate, documented attempts are made to notify the resident's legal representative;
6. immediate attempts are made to notify other involved agencies and parties as appropriate; and
7. immediate notification is made to the appropriate law enforcement authority whenever warranted.

B. The initial written notification submitted to the LDH HSS within 24 hours of occurrence or discovery of the incident shall include:

1. the name of the alleged victim;
2. the name of the accused (if known);
3. the incident category (if applicable);
4. the date and time the incident occurred, if known, and the date and time the incident was discovered;
5. a description of the alleged abuse, neglect, misappropriation of property, and incident of unknown origin from the victim and/or the reporter;
6. documentation of any action taken to protect the resident during the investigation; and
7. any other relevant information available at the time the report is submitted.

C. The nursing facility shall have evidence that the alleged violations are thoroughly investigated and shall ensure protection of the resident from further potential abuse, neglect, and misappropriation of property/funds while the investigation is in progress.

D. A final report with the results of all investigations shall be reported to HSS within five working days of the incident through the use of OTIS or current LDH required database reporting system. The report shall include:

1. the alleged victim's name, date of birth, and a complete description of the physical harm, pain or mental anguish;
2. the name, date of birth, address and telephone number of the accused. If the accused is a nursing facility employee, include the social security number.
3. the date and time the incident occurred, if known, and the date and time the incident was discovered;
4. a description of the alleged abuse, neglect, misappropriation of property, and incident of unknown origin;
5. a detailed summary of the entity's investigation including all witness' information and all facts that lead to the determination of substantiated, unsubstantiated or unable to verify;
 - a. immediate action taken to protect the alleged victim during the investigation; and
 - b. any action taken toward the accused; and
6. nursing facility administrator/CEO finding.

E. If an alleged violation is verified, the nursing facility shall take appropriate corrective action.

F. If the investigation substantiates abuse, neglect, and/or misappropriation of property against a CNA, the following shall be available, if requested, by HSS:

1. a copy of the NAT-7 verifying termination;
2. the nursing facility abuse policy signed by the CNA;
3. the date and time the incident occurred;
4. the date and time the incident was discovered;
5. a copy of the CNA's statement (signed and dated);
6. a copy of the resident's statement (signed and dated);
7. witness statements (signed and dated); and
8. a copy of the time card for the date and time of the incident.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9729. Sanctions and Appeal of Sanctions

A. Any nursing facility found to be in violation of any state or federal statute, regulation or any department rule, adopted in accordance with the Administrative Procedure Act, governing the administration and operation of the nursing facility may be sanctioned as provided for in LAC 48:I.Chapter 46.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9731. Suspensive Appeal of Revocation of License

A. The secretary of the Department of Health, or his/her designee, may deny an application for a license or refuse to renew a license or may revoke an outstanding license when an investigation reveals that the applicant or licensee is in nonconformance with or in violation of the provisions of R.S.40:2009.6, provided that in all such cases, the Secretary shall furnish the applicant or licensee 30 calendar days written notice specifying reasons for the action.

B. The secretary or designee, in a written notice of denial, denial of renewal or revocation of a license, shall notify the applicant or licensee of his right to file a suspensive appeal with the DAL within 30 calendar days from the date the notice, as described in this Subchapter. This appeal or request for a hearing shall specify in detail reasons why the appeal is lodged and why the appellant feels aggrieved by the action of the secretary.

C. When any appeal as described in this Subchapter is received by the DAL, the hearing shall be conducted in accordance with R.S. 40:2009.17 and the Administrative Procedure Act.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9733. Approval of Plans

A. Plans and specifications for new construction of, or to, a nursing facility, and for any major alterations or renovations to a nursing facility, shall be submitted to the Department of Public Safety, Office of the State Fire Marshal (OSFM) for review in accordance with R.S. 40:1563(L), R.S. 40:1574 and LAC 55:V: Chapter 3.

1. Plans and specifications for new construction, major alterations and major renovations shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer where required by Louisiana architecture and engineering licensing laws of R.S. 37:141, et seq., and R.S. 37:681, et seq. and respective implementing regulations.

2. No residential conversions shall be considered for a nursing facility license.

B. The plans and specifications shall comply with all of the following:

1. LDH nursing facility licensing requirements and the Office of Public Health's (OPH) nursing home regulations (see LAC 51:XX); and

2. The OSFM's requirements for plan submittals and compliance with all codes required by that office.

C. Notice of satisfactory review from the department and OSFM constitute compliance with this requirement, if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize

any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.

D. Fire Protection. All nursing facilities licensed by the department shall comply with the rules, laws, codes and enforcement policies as promulgated by OSFM.

1. It shall be the primary responsibility of OSFM to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing acceptable written proof from OSFM that such applicant is complying with their provisions.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9735. Sanitation and Patient Safety

A. All nursing facilities licensed by the department shall comply with the rules, sanitary code and enforcement policies as promulgated by the Office of Public Health (OPH).

1. It shall be the primary responsibility of OPH to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing an approval from OPH that such applicant is complying with their provisions.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9737. Alzheimer's Special Care Disclosure

A. Any provider offering a special program for persons with Alzheimer's disease or a related disorder shall disclose the form of care or treatment that distinguishes it as being especially applicable to or suitable for such persons. For the purpose of this section, a related disorder means progressive, incurable dementia.

B. Prior to entering into any agreement to provide care, a provider shall make the disclosure to:

1. any person seeking services within an Alzheimer's special care program; or

2. any person seeking such services on behalf of a person with Alzheimer's disease or a related disorder within an Alzheimer's special care program. A provider shall make the disclosure upon characterizing programs or services as especially suited for persons with Alzheimer's disease or a related disorder. Additionally, a provider shall give copies of current disclosure forms to all designees, representatives or sponsors of persons receiving treatment in an Alzheimer's special care program.

C. A provider shall furnish the disclosure to the department when applying for a license, renewing an existing license, or changing an existing license. Additional disclosure may be made to the state ombudsman. During the licensure or renewal process, the department will examine all disclosures to verify the accuracy of the information. Failure to provide accurate or timely information constitutes noncompliance with this section and may subject the provider to standard administrative penalties or corrective actions. Distributing an inaccurate or misleading disclosure form constitutes deceptive advertising and may subject a provider to prosecution under LA R.S. 51:1401 et seq. In

such instances, the department will refer the matter to the Attorney General's Division of Consumer Protection for investigation and possible prosecution.

D. Within seven working days of a significant change in the information submitted to the department, a provider shall furnish an amended disclosure form reflecting the change to the following parties:

1. the department;
2. any clients with Alzheimer's disease or a related disorder currently residing in the nursing facility;
3. any designee, representative or sponsor of any such client;
4. any person seeking services in an Alzheimer's special care program; and
5. any person seeking services on behalf of a person with Alzheimer's disease or a related disorder in an Alzheimer's special care program.

E. The provider's Alzheimer's special care disclosure documentation shall contain the following information:

1. a written statement of the overall philosophy and mission of the Alzheimer's special care program which reflects the needs of residents afflicted with dementia;
2. a description of the criteria and process for admission to, transfer, or discharge from the program;
3. a description of the process used to perform an assessment as well as to develop and implement the plan of care, including the responsiveness of the plan of care to changes in condition;
4. a description of staff training and continuing education practices;
5. a description of the physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
6. a description of the frequency and types of resident activities;
7. a statement of philosophy on the family's involvement in care and a statement on the availability of family support programs; and
8. a list of the fees for care and any additional program fees.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter B. Organization and General Services

§9751. Delivery of Services

A. A nursing facility shall be administered in a manner that promotes the highest level of physical, mental and psychosocial functioning and well-being of each resident.

B. A nursing facility shall be in compliance with all required federal, state and local statutes, laws, ordinances, rules, regulations and fees.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9753. Governing Body

A. The nursing facility shall have a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing facility. The governing body shall develop and approve policies and procedures which define and describe

the scope of services offered. The policies and procedures shall be revised as necessary and reviewed at least annually.

B. The governing body shall be responsible for the operation of the nursing facility.

C. The governing body shall appoint in writing a licensed administrator responsible for the management of the nursing facility.

D. The governing body of the nursing facility shall appoint a facility designee charged with the general administration of the nursing facility in the absence of a licensed administrator.

E. The governing body shall notify the department in writing when a change occurs in the administrator position within 30 calendar days from the date the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9755. Administration

A. Facility Administrator. Each nursing facility shall have a full time administrator. The administrator shall be licensed by the Louisiana Board of Examiners of Nursing Facility Administrators.

1. The administrator is the person responsible for the onsite, daily implementation and supervision of the nursing facility's overall operation commensurate with the authority conferred by the governing body.

2. The nursing facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

B. A full-time employee functioning in an administrative capacity shall be authorized in writing to act in the administrator's behalf when he/she is absent or functioning as a full-time administrator for two facilities.

C. Administrator Responsibilities and Restrictions.

1. No individual shall function as a full-time administrator for more than two nursing facilities. When an individual functions as a full-time administrator of two nursing facilities, the department shall consider such factors including but not limited to size and proximity with regard to the administrator's ability to sufficiently manage the affairs of both nursing facilities.

a. The response time to either nursing facility shall be no longer than one hour. The administrator's response to either of the facilities shall include communication, either telephonic or electronic and/or by physical presence at the facility. Any consideration requiring administrator's response shall be reviewed on a case by case basis.

b. If an individual functions as an administrator of two nursing facilities, he/she shall spend 20 hours per week at each nursing facility.

2. The administrator, or his designee, is responsible, in writing, for the execution of all policies and procedures.

3. The administrator is responsible for ensuring the nursing facility has a plan to conduct comprehensive risk assessments to determine the potential adverse impact of equipment, supplies and other factors relating to the health, safety and welfare of residents. Results of the risk

assessments shall be used to develop and implement procedures to address the potential adverse impact and safety risk in the entire facility including but not limited to locked or specialized care units.

4. Written notice shall be provided to HSS for any personnel change in the administrator position. This notice shall be provided within 30 calendar days from the date of change by the facility administrator or, in the absence of an administrator, by the governing body of the nursing facility at the time the change occurs.

a. Notice shall include the identity of all individuals involved and the specific changes which have occurred.

b. The department shall allow nursing facilities 30 days from the date of the change in the position to fill the resulting vacancy in the administrator position. There shall be no exemption to the administrator position requirement.

c. Failure to either fill a vacancy, or to notify the department in writing within 30 days from the date of the change may result in a class C civil fine.

D. Assistant Administrator. A nursing facility with a licensed bed capacity of 161 or more beds shall employ an assistant administrator. An assistant administrator shall be a full-time employee and function in an administrative capacity.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9757. Personnel

A. There shall be sufficient qualified personnel to properly operate the nursing facility to assure the health, safety, proper care and treatment of the residents.

1. Time schedules shall be maintained which indicate the numbers and classification of all personnel, including relief personnel, who works on each tour of duty. The time schedules shall reflect all changes so as to indicate:

- a. staff persons who actually worked;
- b. in what capacity staff worked; and
- c. percentage of time staff persons worked in each of the following capacities:
 - i. housekeeping;
 - ii. laundry;
 - iii. food service;
 - iv. CNA; and
 - v. nurse.

2. If the nursing facility's system of care (such as in the culture change environment) is such that nursing personnel perform services in addition to nursing care, such as housekeeping, laundry and food preparation as part of a plan wherein tasks and routines are organized and carried out to maximally approximate a facility environment, the nursing facility shall ensure:

- a. sufficient nursing staff hours for the care of the resident;
- b. nursing services shall not be neglected in order to provide the additional non-nursing services; and
- c. nurse aides shall be properly trained in food preparation safety and infection control before being allowed to provide this service to residents.

B. Personnel records shall be current and available for each employee and shall contain sufficient information to assure that they are assigned duties consistent with his or her

job description and level of competence, education, preparation and experience.

C. CNA Work History Reporting Requirements

1. If a nursing facility hires certified nursing assistants to provide care and services, the administrator or designee shall complete and submit the appropriate notice to the Nurse Aide Registry to verify employment and termination of that certified nurse aide, within five working days of the action.

2. The administrator or designee shall reconcile with the Nurse Aide Registry, at least monthly, the certified nurse aides employed and those terminated.

3. Accuracy of the work history held by the registry is the responsibility of the nursing facility (owner, administrator or designee).

a. When a change of ownership (CHOW) occurs, the new owner and/or administrator or designee shall ensure that all notifications of employment and termination of certified nurse aides have been sent to the registry, at the point that the change occurs.

b. In the event that a request for verification of work history is received after the CHOW occurs, the new owner and/or administrator or designee shall be responsible for compliance. The notification shall be sent to the registry within five working days of the request.

c. The administrator or designee shall ensure that all notifications of employment and termination of certified nurse aides, employed through staffing agencies, are sent to the registry monthly.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9759. Criminal History Provisions and Screening

A. Nursing facilities shall have statewide criminal history checks performed on non-licensed personnel to include CNAs, housekeeping staff, activity workers, social service personnel and any other non-licensed personnel who provide care or other health related services to the residents in accordance with R.S. 40:1300.51, et seq.

B. All personnel requiring licensure to provide care shall be currently licensed to practice in the state of Louisiana. Credentials of all licensed full-time, part-time and consultant personnel shall be verified on an annual basis in writing by a designated staff member.

C. All personnel, including routine unpaid workers, involved in direct resident care, shall adhere to the Title 51 Public Health Sanitary Code, Chapter 5 requirements for health examinations and Tuberculosis (TB) testing for employees and volunteers.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9761. Policies and Procedures

A. There shall be written policies and procedures:

1. available to staff, residents and legal representatives governing all areas of care and services provided by the nursing facility;

2. ensuring that each resident receives the necessary care and services to promote the highest level of physical, mental and psychosocial functioning and well-being of each resident;

3. developed with the advice of a group of professional personnel consisting of at least a currently licensed physician, the administrator and the director of nursing services;

4. revised as necessary, but reviewed by the professional personnel group referenced in A.3. at least annually;

5. available to admitting physicians;

6. reflecting awareness of, and provision for, meeting the total medical and psychosocial needs of residents, including admission, transfer and discharge planning; and the range of services available to residents, including frequency of physician visits by each category of residents admitted; and

7. approved by the governing body.

B. The nursing facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents and misappropriation of resident property.

1. The nursing facility shall not use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion.

2. The nursing facility shall develop and operationalize policies and procedures for screening and training employees, protection of the residents and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment and misappropriation of property.

C. The administrator or his designee is responsible, in writing, for the execution of such policies.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9763. Assessments and Care Plans

A. An initial assessment of the resident's needs/problems shall be performed and documented in each resident's clinical record by a representative of the appropriate discipline.

B. The assessment, including the PASRR Level II recommendations, if applicable, shall be used to develop the resident's plan of care.

C. The assessment shall be completed within 14 days of admission and the care plan shall be completed within 7 days of the completion of the assessment or by the twenty-first day of admission.

D. The care plan shall be revised as necessary and reviewed at least annually by the professionally licensed personnel directly involved in the care of the resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9765. Staff Orientation, Training and Education

A. New employees shall have an orientation program of sufficient scope and duration to inform the individual about his/her responsibilities and how to fulfill them.

B. The orientation program shall include at least a review of policies and procedures, job description and performance expectations prior to the employee performing his/her responsibilities.

C. A staff development program shall be conducted by competent staff and/or consultants and planned based upon

employee performance appraisals, resident population served by the nursing facility and as determined by nursing facility staff. All employees shall participate in staff development programs which are planned and conducted for the development and improvement of their skills.

D. Training shall include, at a minimum, problems and needs common to the age, physical, mental and biopsychosocial needs of the residents, and discharge planning of those being served, prevention and control of infections, fire prevention and safety, emergency preparedness, accident prevention, confidentiality of resident information and preservation of resident dignity and respect, including protection of privacy and personal and property rights.

E. The nursing facility's training shall be sufficient to ensure the continuing competence of the staff. Nursing assistants shall be provided a minimum of 12 hours of training per year.

F. Records of training shall be maintained indicating the content, date, time, names of employees in attendance, and the name of the individual(s) who conducted the training.

G. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related practices that include or that are informed by evidence-based care practices.

2. Nursing facility staff who provide care on a regular basis to residents in Alzheimer's special care units shall meet the following training requirements.

a. Staff who provide nursing and nursing assistant care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and five hours of dementia-specific training annually. The training shall include the following topics:

- i. an overview of Alzheimer's disease and related dementias;
- ii. communicating with persons with dementia;
- iii. behavior management for persons with dementia;
- iv. promoting independence in activities of daily living for persons with dementia; and
- v. understanding and dealing with family issues for persons with dementia.

b. Staff who have regular communicative contact with residents, but who do not provide nursing and nursing assistant care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. This training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the nursing facility on interacting with residents with dementia.

3. Nursing facility staff who are not regularly assigned to the Alzheimer's special care unit shall meet the following training requirements:

a. Staff who are not regularly assigned to the Alzheimer's special care unit, but still provide nursing assistant care in the facility shall be required to obtain four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually.

b. Unlicensed staff who are not regularly assigned to the Alzheimer's special care unit and who have regular communicative contact with residents but do not provide nursing assistant care in the facility shall be required to obtain four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. The training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the nursing facility on interacting with residents with dementia.

4. Staff delivering approved training will be considered as having received that portion of the training that they have delivered.

5. Any dementia-specific training received in a nursing or nursing assistant program approved by the Department of Health or the Department of Children and Family Services may be used to fulfill the training hours required pursuant to this Section.

6. Nursing facility providers shall offer an approved complete training curriculum themselves or shall contract with another organization, entity, or individual to provide the training.

7. The dementia-specific training curriculum shall be approved by the department. To obtain training curriculum approval, the organization, entity, or individual shall submit the following information to the department or its designee:

- a. a copy of the curriculum;
- b. the name and qualifications of the training coordinator;
- c. a list of all instructors;
- d. the location of the training; and
- e. whether the training will be web-based.

8. A provider, organization, entity or individual shall submit any content changes to an approved training curriculum to the department, or its designee, for review and approval.

9. If a provider, organization, entity or individual, with an approved curriculum, ceases to provide training, the department shall be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity, or individual shall reapply to the department for approval to resume the program.

10. Disqualification of Training Programs and Sanctions. The department may disqualify a training curriculum offered by a provider, organization, entity, or individual that has demonstrated substantial noncompliance with training requirements, including, but not limited to:

- a. the qualifications of training coordinators; or
- b. training curriculum requirements.

11. Compliance with Training Requirements. The review of compliance with training requirements shall include, at a minimum, a review of:

- a. the existence of an approved training curriculum; and
- b. the provider's adherence to established training requirements.

12. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9767. Emergency Preparedness

A. The nursing facility shall have an emergency preparedness plan which conforms to the format and specifications of the Louisiana Model Nursing Home Emergency Plan and the licensing regulations promulgated herein. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that either have the potential to disrupt and/or actually disrupt the nursing facility's ability to provide care and treatment or threatens the lives or safety of the residents. The nursing facility shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

1. All nursing facilities located in the parishes named in Louisiana R.S. 40:2009.25(A) shall submit their emergency preparedness information and documentation to the department for review. Upon request, all other nursing facilities shall forward their emergency preparedness information and documentation to the Louisiana Department of Health (LDH) for review.

2. All nursing facilities' emergency preparedness information and documentation shall, at a minimum, include:

- a. a copy of the nursing facility's emergency preparedness plan;
- b. updates, amendments, modifications or changes to the nursing facility's emergency preparedness plan;
- c. the current census and number of licensed beds; and
- d. the nursing facility location, physical street address with longitude and latitude, and current nursing facility contact information.

3. After reviewing the nursing facility's plan, if the department determines that the plan does not comply with the current minimum licensing requirements or does not promote the health, safety and welfare of the nursing facility's residents, the nursing facility shall, within 10 days of notification, respond with an acceptable plan of correction to amend its emergency preparedness plan.

B. A nursing facility shall enter current nursing facility information into Mstat or into the current LDH Emergency Preparedness webpage or electronic database for reporting.

1. The following information shall be entered or updated into Mstat or into the current LDH Emergency Preparedness webpage or electronic database for reporting before the fifteenth of each month:

- a. operational status;
- b. census;
- c. emergency contact and destination location information;
- d. emergency evacuation transportation needs categorized by the following types:

i. red—high risk patients will need to be transported by advanced life support ambulance due to dependency on mechanical or electrical life sustaining devices or very critical medical condition;

ii. yellow—residents who are not dependent on mechanical or electrical life sustaining devices, but cannot be transported using normal means (buses, vans, cars), may

need to be transported by an ambulance. However, in the event of inaccessibility of medical transport, buses, vans or cars may be used as a last resort; or

iii. green—residents who need no specialized transportation may be transported by car, van, bus or wheelchair accessible transportation.

2. A nursing facility shall also enter or update the nursing facility's information upon request, or as described per notification of an emergency declared by the secretary. Emergency events include, but are not limited to hurricanes, floods, fires, chemical or biological hazards, power outages, tornados, tropical storms and severe weather.

3. Effective immediately, upon notification of an emergency declared by the secretary, all nursing facilities shall file an electronic report with Mstat or into the current LDH Emergency Preparedness webpage or electronic database for reporting.

a. The electronic report shall be filed, as prescribed by the LDH, throughout the duration of the emergency declaration;

b. The electronic report shall include, but is not limited to, the following:

- i. status of operation;
- ii. availability of beds;
- iii. generator status;
- iv. evacuation status;
- v. shelter in place status; and
- vi. other information requested by the department.

NOTE: The electronic report shall not be used to request resources or to report emergency events.

C. The emergency preparedness plan shall be individualized and site specific. All information included in the plan or submitted with the plan shall be current and correct. At a minimum, the nursing facility shall have a written emergency plan that addresses:

1. the procedures and criteria used for determining when the nursing facility will evacuate, including a listing of specific evacuation determinations for those procedures and criteria;

2. the procedures and criteria used for determining when the nursing facility will shelter in place, including a listing of specific sheltering in place determinations for those procedures and criteria;

3. a primary sheltering host site(s) and alternative sheltering host site(s) outside the area of risk;

a. these host sites shall be verified by written agreements or contracts that have been signed and dated by all parties;

b. these agreements or contracts shall be verified in writing annually; and

c. the nursing facility shall accept only that number of residents for which it is licensed unless prior written approval has been secured from the department or if the nursing facility is acting as a host site during a declared emergency;

4. the policies and procedures for mandatory evacuations shall provide that if the state, parish, or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or area in which the nursing facility is located, the nursing facility shall evacuate unless the nursing facility receives a written exemption from the ordering authority prior to the mandated evacuation;

5. the monitoring of emergency alerts or notifications including weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials:

a. this monitoring plan shall identify who will perform the monitoring, what equipment will be used for monitoring, and who should be contacted if needed; and

b. the nursing facility shall have plans for monitoring during normal daily operations, when sheltering in place or during evacuations;

6. the delivery of essential care and services to residents, whether the residents are housed in the nursing facility, at an off-site location, or when additional residents are housed in the nursing facility during an emergency;

7. the provisions for the management of staff, including provisions for sufficient qualified staff as well as for distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

8. an executable plan for coordinating transportation services that are sufficient for the resident census and staff. The vehicles required for evacuating residents to another location that are equipped with temperature controls shall be used when available. The plan shall include the following information:

a. a triage system to identify residents who require specialized transportation and medical needs including the number of residents who need:

i. red—high risk patients will need to be transported by advanced life support ambulance due to dependency on mechanical or electrical life sustaining devices or very critical medical condition;

ii. yellow—residents who are not dependent on mechanical or electrical life sustaining devices, but cannot be transported using normal means (buses, vans, cars), may need to be transported by an ambulance. However, in the event of inaccessibility of medical transport, buses, vans or cars may be used as a last resort; or

iii. green—residents who need no specialized transportation may be transported by car, van, bus or wheelchair accessible transportation.

b. a written transportation contract(s) for the evacuation of residents and staff to a safe location outside the area of risk that is signed and dated by all parties. Vehicles that are owned by, or are at the disposal of the nursing facility, shall have written usage agreements that are signed, dated and shall include verification of ownership; and

i. the number and type of vehicles;

ii. the capacity of each vehicle;

iii. a statement of whether each vehicle is equipped with temperature controls; and

c. plans to prevent and treat heat related medical illnesses due to the failure of, or the lack of, temperature controls during transport.

NOTE: A copy of a vehicle's title or registration will be sufficient for verification of ownership.

9. the procedures to notify the resident's family or responsible representative of the nursing facility's intent to either shelter in place or evacuate. The nursing facility shall have a designee(s) who is responsible for this notification. If the nursing facility evacuates, notification shall include:

- a. the date and approximate time that the nursing facility is evacuating;
- b. the place or location to which the nursing facility is evacuating, including the:

- i. name;
- ii. address; and
- iii. telephone number;

c. a telephone number that the family or responsible representative may call for information regarding the nursing facility's evacuation; and

d. Notification to the resident's family, legal representative, or designated contact shall be made as far in advance as possible, but at least within 24 hours of the determination to shelter in place or after evacuation when communication is available;

10. the procedures or methods that will be used to directly attach identification to the nursing facility resident. The nursing facility shall designate a staff person to be responsible for this identification procedure. This identification shall remain directly attached to the resident during all phases of an evacuation and shall include the following minimum information, including but not limited to:

- a. current and active diagnosis;
- b. medications, including dosage and times administered;
- c. allergies;
- d. special dietary needs or restrictions; and
- e. next of kin, including contact information;

11. the nursing facility shall designate a staff person who is responsible for ensuring that a sufficient supply of the following items accompanies residents on buses or other transportation during all phases of evacuation:

- a. water;
- b. food;
- c. nutritional supplies and supplements;
- d. medication(s); and
- e. other necessary supplies;

12. the procedures for ensuring that all residents have access to licensed nursing staff and that appropriate nursing services are provided during all phases of the evacuation, including transport of residents:

- a. for buses or vehicles transporting 15 or more residents, licensed nursing staff shall accompany the residents on the bus or vehicle;
- b. a licensed therapist(s) or paramedic may substitute for licensed nursing staff;

13. staffing patterns for sheltering in place and for evacuation, including contact information for such staff;

14. a plan for sheltering in place if the nursing facility determines that sheltering in place is appropriate;

a. if the nursing facility shelters in place, the nursing facility's plan shall ensure that seven days of necessary supplies are on hand or have written agreements, including timeliness, to have supplies delivered prior to the emergency event. Supplies should include, but are not limited to:

- i. drinking water or fluids, a minimum of 1 gallon per day per person sheltering at the nursing facility;
- ii. water for sanitation;
- iii. non-perishable food, including special diets;
- iv. medications;

- v. medical supplies;
- vi. personal hygiene supplies; and
- vii. sanitary supplies;

b. if the nursing facility shelters in place, the nursing facility's plan shall provide for a posted communications plan for contacting emergency services and monitoring emergency broadcasts. The nursing facility shall designate a staff person to be responsible for this function. The communication plan shall include:

- i. the type of equipment to be used;
- ii. back-up equipment to be used if available;
- iii. the equipment's testing schedule; and
- iv. the power supply for the equipment being used;

c. the nursing facility's plan shall include a statement indicating whether the nursing facility has a generator for sheltering in place. If the nursing facility has such a generator, the plan shall provide for a seven day supply of fuel, either on hand or delivered prior to the emergency event. If the nursing facility has such a generator, the plan shall provide a list of the generator's capabilities including:

- i. its ability to provide cooling or heating for all or designated areas in the nursing facility;
- ii. the ability to power an OPH approved sewerage system;
- iii. the ability to power an OPH approved water system;
- iv. the ability to power medical equipment;
- v. the ability to power refrigeration;
- vi. the ability to power lights; and
- vii. the ability to power communications;

d. an assessment of the integrity of the nursing facility's building to include, but not be limited to:

- i. wind load or ability to withstand wind;
- ii. flood zone and flood plain information;
- iii. power failure;
- iv. age of building and type of construction; and
- v. determinations of, and locations of interior safe zones.

e. plans for preventing and treating heat related medical illnesses due to the failure of or the lack of air conditioning while sheltering in place;

f. the nursing facility's plan shall include instructions to notify OHSEP and LDH of the nursing facility's plan to shelter in place; and

g. the nursing facility shall provide to LDH a list of residents sheltering in place;

15. those nursing facilities that are subject to the provisions of R.S. 40:2009.25(A) shall perform a risk assessment to determine the nursing facility's integrity. The integrity of the nursing facility and all relevant and available information shall be used in determining whether sheltering in place is appropriate. All elevations shall be given in reference to sea level or adjacent grade as appropriate. The assessment shall be reviewed and updated annually. The risk assessment shall include the nursing facility's determinations and the following documentation:

- a. the nursing facility's latitude and longitude;
- b. flood zone determination for the nursing facility and base flood elevation, if available:
 - i. the nursing facility shall evaluate how these factors will affect the building;

c. elevations of the building(s), heating ventilation and air conditioning (HVAC) system(s), generator(s), fuel storage, electrical service, water system and sewer motor, if applicable:

i. the nursing facility shall evaluate how these factors will affect the nursing facility considering projected flood and surge water depths;

d. an evaluation of the building to determine its ability to withstand wind and flood hazards to include:

i. the construction type and age;

ii. roof type and wind load;

iii. windows, shutters and wind load;

iv. wind load of shelter building; and

v. location of interior safe zones;

e. an evaluation of each generator's fuel source(s), including refueling plans, fuel consumption rate and a statement that the output of the generator(s) will meet the electrical load or demand of the required (or designated) emergency equipment;

f. the determinations of an evaluation of surroundings, including lay-down hazards or objects that could fall on the building and hazardous materials, such as:

i. trees;

ii. towers;

iii. storage tanks;

iv. other buildings;

v. pipe lines;

vi. chemical and biological hazards; and

vii. fuels;

g. Sea, Lake and Overland Surge from Hurricanes (SLOSH) Modeling using the Maximum's of the Maximum Envelope of Waters (MOM) for the nursing facility's specific location and the findings for all categories of hurricanes. The nursing facility's plan shall include an evaluation of how this will or will not affect the nursing facility;

16. the nursing facility's plan shall provide for an evaluation of security risks and corresponding security precautions that will be taken for protecting residents, staff and supplies during and after an emergency event;

17. the nursing facility's plan shall include clearly labeled and legible floor plan(s) of the nursing facility's building(s). The nursing facility's plan shall include the following:

a. the areas being used as shelter or safe zones;

b. the supply and emergency supply storage areas;

c. the emergency power outlets;

d. the communications center;

e. the location of the posted emergency plan;

i. the posted location shall be easily accessible to staff; and

f. a pre-designated command post.

D. Emergency Plan Activation, Review and Summary

1. The nursing facility's shelter in place plan and evacuation plan shall each be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if a need is indicated by the nursing facility's performance during the emergency event or the planned drill.

2. Nursing facilities subject to the provisions of R.S. 40:2009.25(B) shall submit a summary of the updated plan to the department's nursing facility emergency preparedness manager by March 1 of each year. If changes are made during the year, a summary of the amended plan shall be submitted within 30 days of the modification. All agreements and contracts shall be verified by all parties annually and submitted.

E. The nursing facility's plan shall be submitted to the parish or local OHSEP annually. Any recommendations by the parish or local OHSEP regarding the nursing facility's plan shall be documented and addressed by the nursing facility.

1. For nursing facilities, the following requirements shall be met:

a. The nursing facility's plan shall include verification of its submission to the parish or local OHSEP.

b. A copy of any and all response(s) by the nursing facility to the local or parish OHSEP recommendations shall be forwarded to LDH nursing facility emergency preparedness manager.

F. The plan shall be available to representatives of the Office of the State Fire Marshal and the Office of Public Health.

G. The nursing facility's plan shall follow all applicable laws, standards, rules or regulations.

H. Evacuation, Temporary Relocation or Temporary Cessation

1. The following applies to any nursing facility that evacuates, temporarily relocates or temporarily ceases operation at its licensed location due to an emergency.

a. The nursing facility shall immediately give written notice to HSS by hand delivery, facsimile or email of the following information:

i. the date and approximate time of the evacuation;

ii. the sheltering host site(s) to which the nursing facility is evacuating; and

iii. a list of residents being evacuated, which shall indicate the evacuation site for each resident.

b. Within 48 hours, the nursing facility shall notify the HSS of any deviations from the intended sheltering host site(s) and shall provide HSS with a list of all residents and their locations.

c. If there was no damage to the licensed location due to the emergency and there was no power outage of HVAC (either through regular service or generator) of more than 48 hours at the licensed location due to the emergency event, the nursing facility may reopen at its licensed location and shall notify HSS within 24 hours of reopening. The nursing facility shall comply with OPH and OSFM and have clearance from the local office of emergency preparedness.

d. For all other evacuations, temporary relocations, or temporary cessation of operations due to an emergency event, a nursing facility shall submit to Health Standards a written request to reopen, prior to reopening at the licensed location. That request shall include:

i. damage report;

ii. extent and duration of any power outages;

iii. re-entry census;

iv. staffing availability;

- v. access to emergency or hospital services; and
- vi. availability and/or access to food, water, medications and supplies.

2. Upon receipt of a reopening request, the department shall review and determine if reopening will be approved. The department may request additional information from the nursing facility as necessary to make determinations regarding reopening.

3. After review of all documentation, the department shall issue a notice of one of the following determinations:

- a. approval of reopening without survey;
- b. surveys required before approval to reopen will be granted. This may include surveys by the OPH, OSFM and HSS; or
- c. denial of reopening.

4. The purpose of the surveys referenced above is to assure that the nursing facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

a. The Health Standards Section, in coordination with state and parish OHSEP, will determine the nursing facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services and necessary supplies.

b. The Health Standards Section will give priority to reopening surveys.

5. Upon request by the Department, the nursing facility shall submit a written summary attesting how the nursing facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of all injuries and deaths of residents that occurred during execution of the plan, evacuation and temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

I. Sheltering in Place If a nursing facility shelters in place at its licensed location during an emergency event, the following will apply.

1. Upon request by the department, the nursing facility shall submit a written summary attesting how the nursing facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

J. Unlicensed Sheltering Sites

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location due to an emergency event, the nursing facility shall be allowed to remain at an unlicensed sheltering site for a maximum of five days. A nursing facility may request one extension, not to exceed 15 days, to remain at the unlicensed sheltering site.

a. The request shall be submitted in writing to HSS and shall be based upon information that the nursing facility's residents will return to its licensed location, or be placed in alternate licensed nursing facility beds within the extension period requested.

b. The extension shall only be granted for good cause shown and for circumstances beyond the control of the nursing facility.

c. This extension shall be granted only if essential care and services to residents are ensured at the current sheltering facility.

2. Upon expiration of the five days or upon expiration of the written extension granted to the nursing facility, all residents shall be relocated to a licensed nursing facility and HSS and OHSEP shall be informed of the residents' new location(s).

K. Inactivation of License due to Declared Disaster or Emergency

1. A licensed nursing facility in an area or areas which have been affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed two years, provided that the following conditions are met:

a. the licensed nursing facility shall submit written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

i. the nursing facility has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

ii. the licensed nursing facility intends to resume operation as a nursing facility in the same service area; and

iii. includes an attestation that the emergency or disaster is the sole causal factor in the interruption of the provision of services;

NOTE: Pursuant to these provisions, an extension of the 60 day deadline may be granted at the discretion of the department.

b. the licensed nursing facility resumes operating as a nursing facility in the same service area within two years of the approval of construction plans by all required agencies upon issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

c. the licensed nursing facility continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

d. the licensed nursing facility continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to inactivate a nursing facility license, the department shall issue a notice of inactivation of license to the nursing facility.

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a nursing facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the nursing facility shall submit a written license reinstatement request to the licensing agency of the department within two years of the executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing survey; and

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

4. Upon receiving a completed written request to reinstate a nursing facility license, the department shall conduct a licensing survey. If the nursing facility meets the requirements for licensure and the requirements under this Subsection, the department shall issue a notice of reinstatement of the nursing facility license. The licensed bed capacity of the reinstated license shall not exceed the licensed bed capacity of the nursing facility at the time of the request to inactivate the license.

5. No change of ownership in the nursing facility shall occur until such nursing facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a nursing facility.

6. The provisions of this Subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the nursing facility license.

L. Inactivation of License due to Non-Declared Emergency or Disaster

1. A licensed nursing facility in an area or areas which have been affected by a non-declared emergency or disaster may seek to inactivate its license, provided that the following conditions are met:

a. the licensed nursing facility shall submit written notification to the Health Standards Section within 30 days of the date of the non-declared emergency or disaster stating that:

i. the licensed nursing facility has experienced an interruption in the provisions of services as a result of events that are due to a non-declared emergency or disaster;

ii. the licensed nursing facility intends to resume operation as a nursing facility in the same service area;

iii. the licensed nursing facility attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

iv. the licensed nursing facility's initial request to inactivate does not exceed one year for the completion of repairs, renovations, rebuilding or replacement of the facility.

NOTE: Pursuant to these provisions, an extension of the 30 day deadline for initiation of request may be granted at the discretion of the department.

b. the licensed nursing facility continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

c. the licensed nursing facility continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to temporarily inactivate a nursing facility license, the department shall issue a notice of inactivation of license to the nursing facility.

3. Upon facility's receipt of the department's approval of request to inactivate the facility's license, the facility shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the facility to the OSFM and the OPH as required.

4. The licensed nursing facility shall resume operating as a nursing facility in the same service area within one year of the approval of renovation/construction plans by OSFM and OPH as required. Exception: If the facility requires an extension of this timeframe due to circumstances beyond the facility's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show facility's active efforts to complete construction or repairs and the reasons for request for extension of facility's inactive license. Any approvals for extension are at the sole discretion of the department.

5. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a nursing facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the nursing facility shall submit a written license reinstatement request to the licensing agency of the department;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing or physical environment survey; and

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

6. Upon receiving a completed written request to reinstate a nursing facility license, the department may conduct a licensing or physical environment survey. The department may issue a notice of reinstatement if the facility has met the requirements for licensure including the requirements of this Subsection.

NOTE: The licensed bed capacity of the reinstated license shall not exceed the licensed bed capacity of the nursing facility at the time of the request to temporarily inactivate the license.

7. No change of ownership in the nursing facility shall occur until such nursing facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a nursing facility.

8. The provisions of this Subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

9. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the nursing facility license.

M. Temporary Inactivation of Licensed Nursing Facility Beds Due to Major Alterations

1. A licensed nursing facility which is undergoing major alterations to its physical plant may request a temporary inactivation of a certain number of licensed beds providing that:

a. The nursing facility submits a written request to the licensing agency of the department seeking temporary inactivation of a certain number of its licensed bed capacity. Such written request shall include the following:

i. that the nursing facility has experienced or will experience a temporary interruption in the provisions of services to its licensed bed capacity as a result of major alterations;

ii. an attestation that the renovations are the sole causal factor in the request for temporary inactivation of a certain number of its licensed beds;

iii. the anticipated start date of the temporary inactivation of a certain number of licensed beds;

iv. the anticipated end date of the temporary inactivation of a certain number of licensed beds; and

v. the number of licensed beds requested to be inactivated temporarily.

b. The nursing facility ensures the health, safety and welfare of each resident during the major alterations; and

c. The nursing facility continues to provide, and each resident continues to receive, the necessary care and services to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, in accordance with each resident's comprehensive assessment and plan of care.

2. Upon receiving a completed written request for temporary inactivation of a certain number of the licensed bed capacity of a nursing facility, the department shall issue a notice of temporary inactivation of a certain number of the nursing facility's licensed beds.

3. No change of ownership in the nursing facility shall occur until such nursing facility has completed the major alterations and has resumed operating at prior approved licensed bed capacity.

4. Upon completion of the major alterations and receiving a completed written request to reinstate the number of licensed beds of a nursing facility, the department may conduct a physical environment survey. If the nursing facility meets the requirements for licensure and the requirements under this Subsection, the department may issue a notice of reinstatement of the nursing facility licensed bed capacity.

NOTE: The licensed bed capacity after major alterations are completed shall not exceed the licensed bed capacity of the nursing facility at the time of the request to temporarily inactivate a certain number of its licensed bed capacity prior to renovations.

5. The provisions of this Subsection shall not apply to a nursing facility which has voluntarily surrendered its license and ceased operation.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter C. Resident Rights

§9775. Transfer and/or Discharge of the Resident

A. Voluntary Individual Transfer or Discharge. The nursing facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the nursing facility to the receiving entity. The information in the transferred and/or discharged resident's care plan, MDS, any mental health and/or psychosocial assessments and/or evaluations and discharge plan shall be submitted to the individual or institution into whose care the resident is being discharged

B. Involuntary Transfer or Discharge. The nursing facility shall permit each resident to remain in the nursing facility, and shall not transfer or discharge the resident from the nursing facility unless:

1. the transfer or discharge is necessary for the resident's welfare and/or the resident's needs cannot be met in the nursing facility;

2. the transfer or discharge is appropriate because the resident's health has improved sufficiently such that the resident no longer needs the services provided by the nursing facility;

3. the safety and health of individuals in the nursing facility is endangered by the resident to be transferred or discharged;

4. the resident has failed, after reasonable and appropriate notice, to pay for services rendered by the nursing facility;

5. the nursing facility ceases to operate.

C. Notice Before Involuntary Transfer or Discharge. Before a nursing facility involuntary transfers or discharges a resident, the nursing facility shall:

1. Notify the resident, and if known, a family member or legal representative of the resident, of the transfer or discharge and the reasons for the move in writing and in a language and manner easily understood.

2. Record the reasons in the resident's clinical record.

3. Timing of the Notice. The notice of transfer or discharge shall be made by the nursing facility at least 30 days before the resident is transferred or discharged.

4. Notice may be made as soon as practicable before transfer or discharge when:

a. the safety and health of the individuals in the nursing facility would be endangered;

b. the resident's health improves sufficiently to allow a more immediate transfer or discharge;

c. an immediate transfer or discharge is required by the resident's urgent medical needs; or

d. a resident has not resided in the nursing facility for 30 days.

NOTE: In nursing facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to fifteen days for nonpayment of a bill for a stay at the nursing facility.

5. Contents of the Notice. The written notice to the resident and/or resident's representative (if applicable) of involuntary discharge or transfer shall include the following information:

a. the reason for transfer or discharge;

b. the effective date of transfer or discharge;

c. the location to which the resident is to be transferred or discharged;

d. a statement that the resident has the right to appeal the action to the state. The address, phone number and hours of operation of the Division of Administrative Law or its successor;

e. the name, address and telephone number of the state long term care ombudsman;

f. for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities; and

g. for nursing facility residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act.

6. The nursing facility shall transmit a copy of the involuntary transfer/discharge notice to the local long term care ombudsman program.

D. Transfer. The nursing facility shall ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his/her legal representative or interested family member, if known and available, shall be consulted in choosing another nursing facility if nursing facility placement is required.

E. Appeal of Involuntary Discharge or Transfer. The resident, or his/her legal representative or designated contact, if known and available, has the right to appeal any transfer or discharge to the Division of Administrative Law, which shall provide a fair hearing in all such appeals.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9777. Statement of Rights and Responsibilities

A. In accordance with R.S.40:2010.6, et seq., all nursing facilities shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement. The statement shall assure each resident the following:

1. the right to civil and religious liberties, including but not limited to:

a. knowledge of available choices;

b. the right to independent personal decision; and

c. the right to encouragement and assistance from the staff of the nursing facility in the fullest possible exercise of these civil and religious rights;

2. the right to private and uncensored communications, including but not limited to:

a. receiving and sending unopened correspondence;

b. access to a telephone;

c. visitation with any person of the resident's choice; and

d. overnight visitation outside the nursing facility with family and friends in accordance with nursing facility policies, and physician orders without the loss of his bed;

i. nursing facility visiting hours shall be flexible, taking into consideration special circumstances such as out of town visitors and working relatives or friends;

ii. with the consent of the resident and in accordance with the policies approved by the Louisiana Department of Health, the facility shall permit recognized

volunteer groups, representatives of community based legal, social, mental health, and leisure and planning programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident;

3. The right to be granted immediate access to the following:

a. any representative of the secretary of the United States Department of Health and Human Services;

b. any representative of the state acting pursuant to his duties and responsibilities under state or federal law;

c. the resident's individual physician;

d. the state long term care ombudsman;

e. the agency responsible for the protection and the advocacy system for individuals with developmental disabilities;

f. the agency responsible for the protection and the advocacy system for individuals with mental illness;

g. immediate family members, other relatives of the resident, and the resident's clergy subject to the resident's right to deny or withdraw consent at any time;

h. others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time;

i. reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

j. reasonable restrictions imposed by the nursing facility, Department of Public Safety and Corrections, or the Court that protect the welfare and safety of all the nursing facility's residents. The nursing facility may change the location of visits to assist care giving or protect the privacy of other residents;

4. the right to present grievances on behalf of himself or others to the nursing facility's staff or administrator, to governmental officials, or to any other person; to recommend changes in policies and services to nursing facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination or reprisal. This right includes access to the resident's sponsor and the Louisiana Department of Health; and the right to be a member of, to be active in, and to associate with advocacy or special interest groups;

5. the right to be fully informed, in writing and orally, prior to or at time of admission and during his stay, of services not covered by the basic per diem rates and of bed reservation and refund policies of the facility;

6. the right to be fully informed, in a language that he or she can understand, of his or her total health status, including but not limited to, his or her medical conditions and proposed treatment, to participate in the planning of all medical treatment, including the right to refuse medication and treatment, and to be informed of the consequences of such actions;

7. the right to receive adequate and appropriate health care and protective and support services, including services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules promulgated by LDH;

8. the right to refuse treatment and to refuse to participate in experimental research;

9. the right to formulate an advanced directive and to address life-sustaining procedures, the purpose of which is to assure that all residents have the fundamental right to control the decisions relating to their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances where such persons are diagnosed as having a terminal and irreversible condition. This purpose may be fulfilled by the following, non-exclusive means:

a. an advance directive executed pursuant to the provisions of R.S. 40:1151 et seq., defined as a declaration by a resident which instructs his/her physician to withhold or withdraw life-sustaining procedures or designates another to make the treatment decision and to make such a declaration for him;

b. Louisiana Physician Order for Scope of Treatment (LaPOST), executed pursuant to the provisions of L.R.S. 40:1155.1 et seq., which documents the wishes of a qualified patient in a physician order; or

c. any other means of documenting written instructions or directives, including but not limited to, a living will, durable power of attorney for health care, a medical power of attorney, a pre-existing medical order for do not resuscitate (DNR) or another document that directs the resident's health care choices related to life-sustaining treatments;

NOTE: A resident's choice to document wishes relative to withholding or withdrawal of medical treatment or life-sustaining procedures is voluntary and the provisions herein shall not be construed to compel a resident to do so and shall not be a condition of admission to a nursing facility.

10. the right to have privacy in treatment and in caring for personal needs;

a. to have closed room doors, and to have nursing facility personnel knock before entering the room, except in case of an emergency;

b. to have confidentiality in the treatment of personal and medical records;

c. to be secure in storing and using personal possessions, subject to applicable state and federal health and safety regulations and the rights of other residents; and

d. the right to privacy of the resident's body during, but not limited to toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

11. the right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and oral explanations of the services provided by the facility, including statements and explanations required to be offered on an as needed basis;

12. the right to be free from mental and physical abuse; and the right to be free from any physical or chemical restraint imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms;

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth in writing the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident

punishment, or for any reason other than resident protection or safety;

13. the right of the resident or his or her legal representative:

a. upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays);and

b. after receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing facility.

14. the right to select a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XVIII or Title XIX of the Social Security Act; and to obtain information about, and to participate in, community based activities and programs, unless such participation would violate infection control or quarantine laws or regulations;

15. the right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents' health and safety. Clothing need not be provided to the resident by the facility except in emergency situations. If provided, it shall be of reasonable fit;

16. the right to have copies of the nursing facility's rules and regulations and an explanation of the resident's responsibility to obey all reasonable rules and regulations of the nursing facility and of his responsibility to respect the personal rights and private property of other residents;

17. the right to be informed of the bed reservation policy for a hospitalization:

a. the nursing facility shall inform a private pay resident and his sponsor that his bed shall be reserved for any single hospitalization for a period up to 30 days, provided the nursing facility receives reimbursement;

b. notice shall be provided within 24 hours of the hospitalization;

18. the right to receive a prompt response to all reasonable requests and inquiries;

19. the right to refuse to serve as a medical research subject without jeopardizing access to appropriate medical care;

20. the right to use tobacco at his own expense under the facility's safety rules and under applicable laws and rules of the state, unless the nursing facility's written policies preclude smoking in designated areas;

21. the right to consume a reasonable amount of alcoholic beverages at his own expense, unless:

a. not medically advisable as documented in his medical record by the attending physician;

b. alcohol is contraindicated with any of the medications in the resident's current regime; or

c. expressly prohibited by published rules and regulations of a nursing facility owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as a part of its religious belief;

22. the right to retire and rise in accordance with the resident's personal preference; and

23. the right to have any significant change in health status immediately reported to the resident and his/her legal representative or interested family member, if known and available, as soon as such a change is known to the facility's staff.

B. A sponsor may act on a resident's behalf to assure that the nursing facility does not deny the resident's rights under the provisions of R.S. 40:2010.6, et seq., and no right enumerated therein may be waived for any reason whatsoever.

C. Each nursing facility shall provide a copy of the statement required by R. S. 40:2010.8(A) to each resident and sponsor upon or before the resident's admission to the facility and to each staff member of the facility. The statement shall also advise the resident and his sponsor that the nursing facility is not responsible for the actions or inactions of other persons or entities not employed by the nursing facility, such as the resident's treating physician, pharmacists, sitter, or other such persons or entities employed or selected by the resident or his sponsor. Each facility shall prepare a written plan and provide appropriate staff training to implement the provisions of R.S. 40:2010.6, et seq. including, but not limited to, an explanation of the following:

1. the residents' rights and the staff's responsibilities in the implementation of those rights; and
2. the staff's obligation to provide all residents who have similar needs with comparable services as required by state licensing standards.

D. The nursing facility shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the nursing facility. The nursing facility shall provide such notification prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be acknowledged in writing.

E. The nursing facility shall inform each resident before or at the time of admission, and periodically in the nursing facility and of charges for those services, including any charges for services not covered under Medicare or by the nursing facility's per diem rate.

F. The nursing facility shall notify the resident and the resident's legal representative or sponsor when there is a change in room or roommate assignment. Notification shall be given at least 24 hours before the change and a reason for the move shall be given to all parties. Documentation of this shall be entered in the medical record.

G. Involuntary Admittance. Residents shall not be forced to enter or remain in a nursing facility against their will unless they have been judicially interdicted.

H. Room to Room Transfer (Intra-Nursing Facility). The resident or curator and responsible party shall receive at least a 24 hour notice before the room of the resident is changed. A reason for the move will be given to resident and curator/responsible party.

1. Documentation of all of this information will be entered in the medical record.
2. A resident has the right to receive notice when their roommate is changed.

NOTE: The resident has the right to relocate prior to the expiration of the 24 hours' notice if this change is agreeable to the resident.

I. Any violations of the residents' rights set forth in R.S. 40:2010.6, et seq. shall constitute grounds for appropriate action by the Louisiana Department of Health.

1. Residents shall have a private right of action to enforce these rights, as set forth in R.S. 40:2010.9. The state courts shall have jurisdiction to enjoin a violation of residents' rights and to assess fines for violations not to exceed 100 dollars per individual violation.

2. In order to determine whether a facility is adequately protecting residents' rights, inspection of the facility by LDH shall include private, informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to the rights specified in R.S. 40:2010.6 et seq., and with respect to compliance with departmental standards.

J. Any person who submits or reports a complaint concerning a suspected violation of residents' rights or concerning services or conditions in a home or health care facility or who testifies in any administrative or judicial proceedings arising from such complaint shall have immunity from any criminal or civil liability therefore, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justifiable issue of either law or fact raised by the complaining party.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9779. Resident Personal Fund Account

A. The resident has the right to manage his/her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

B. Upon written authorization of a resident, the facility shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility.

C. Deposit of Funds

1. Funds in Excess of \$50. The facility shall deposit any residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account.

2. Funds Less Than \$50. The facility shall maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

D. Resident Access to Personal Funds Held by Facility. A resident shall have access to facility held funds on an on-going basis and be able to arrange for access to larger funds.

1. Requests for less than \$50 shall be honored within the same day.

2. Requests for \$ 50 or more shall be honored within three banking days.

E. Accounting and Records. The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

1. The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

2. The individual financial record shall be available through quarterly statements and on request to the resident or his or her legal representative.

F. Conveyance upon Transfer or Discharge. Upon discharge or transfer of a resident from the facility, the provider shall not withhold personal fund account monies in lieu of payment for any outstanding balance owed by a resident unto the provider.

G. Conveyance upon Death of a Resident. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey within 30 days the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

H. Assurance of Financial Security. The facility shall purchase a surety bond, or otherwise provide assurance satisfactory to the secretary, to assure the security of all personal funds of residents deposited with the facility.

I. Account Agreement

1. A nursing facility resident, with a personal fund account managed by the nursing facility, may sign an account agreement acknowledging that any funds deposited into the personal fund account by, or on the resident's behalf, are jointly owned by the resident and his legal representative or next of kin. The account agreement shall state that the:

- a. funds in the account shall be jointly owned with the right of survivorship;
- b. funds in the account shall be used by, for, or on behalf of the resident;
- c. resident or the joint owner may deposit funds into the account; and
- d. resident or joint owner may endorse any check, draft or other instrument to the order of any joint owner, for deposit into the account.

2. If a valid account agreement has been executed by the resident, upon the resident's death, the nursing facility shall transfer the funds in the resident's personal fund account to the joint owner within 30 days of the resident's death. This provision only applies to personal fund accounts not in excess of \$2000.

3. If a valid account agreement has not been executed, or if the personal fund account is in excess of \$2,000, upon the resident's death, the nursing facility shall comply with the federal and state laws and regulations regarding the disbursement of funds in the account and the properties of the deceased.

4. The provisions of this section shall have no effect on federal or state tax obligations or liabilities of the deceased resident's estate. If there are other laws or regulations which conflict with these provisions, those laws or regulations will govern over and supersede the conflicting provisions.

J. Nursing Facility Residents' Burial Insurance Policy. With the resident's permission, the nursing facility administrator or designee may assist the resident in acquiring a burial policy, provided that the administrator, designee, or affiliated persons derive no financial or other benefit from the resident's acquisition of the policy.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Chapter 98. Nursing Facilities

Subchapter A. Physician Services

§9801. Medical Director

A. The nursing facility shall designate, pursuant to a written agreement, a physician currently holding an unrestricted license to practice medicine by the Louisiana State Board of Medical Examiners to serve as medical director.

B. The medical director is responsible for coordinating medical and behavioral health care and assisting to develop, implement and evaluate resident care policies and procedures that reflect current standards of practice.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9803. Physician Supervision

A. A resident shall be admitted to the nursing facility only with an order from a physician licensed to practice medicine in Louisiana.

1. Each resident shall remain under the care of a physician licensed to practice medicine in Louisiana and shall have freedom of choice in selecting his/her attending physician.

2. The nursing facility shall be responsible for assisting in obtaining an attending physician with the resident's or sponsor's approval when the resident or sponsor is unable to find one.

B. Another physician supervises the medical care of residents when their attending physician is unavailable.

C. Any required physician task may also be satisfied when performed by an advanced practice registered nurse or physician assistant who is not an employee of the nursing facility but who is working under the direction and supervision of a physician and/or in collaboration with a physician.

D. The nursing facility shall provide or arrange for the provision of physician services 24 hours a day seven days a week, in case of emergency.

E. The name and telephone numbers of the attending physicians and the physicians to be called in case of emergency when the attending physician is not available shall be readily available to nursing personnel. Upon request, the telephone numbers of the attending physician or his/her replacement in case of emergency shall be provided to the resident, resident's representative, if applicable and/or sponsor, guardian, or designated contact.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9805. Physician Visits and Responsibilities

A. Admissions

1. At the time each resident is admitted, the nursing facility shall have attending physician orders for the resident's immediate care. At a minimum, these orders shall consist of dietary, pharmacy, and routine nursing care to maintain or improve the resident's functional abilities.

2. If the orders are from a physician other than the resident's attending physician, they shall be communicated to the attending physician and verification shall be entered into the resident's clinical record by the nurse who took the orders.

3. A physical examination shall be performed by the attending physician within 72 hours after admission unless such examination was performed within 30 days prior to admission with the following exceptions:

a. If the physical examination was performed by another physician, the attending physician may attest to its accuracy by countersigning it and placing a copy in the resident's record; or

b. If the resident is transferring from another nursing facility with the same attending physician, a copy of all previous examinations may be obtained from the transferring nursing facility with the attending physician initialing its new date. The clinical history and physical examination, together with diagnoses shall be in the resident's medical record.

c. The physical examination shall include TB testing/screening as required by the current *LAC Title 51 Public Health Sanitary Code* Chapter 5 for all persons admitted to nursing facilities.

B. Each resident shall be seen by his/her attending physician at intervals to meet the holistic needs of the resident but at least annually.

C. At each visit, the attending physician shall write, date and sign progress notes.

D. The physician's treatment plan (physician's orders) shall be reviewed by the attending physician at least once annually.

E. Physician telephone/verbal orders shall be received only by physicians, pharmacists, licensed nurses, or licensed therapists, who within the scope of their practice, are allowed to receive physician's orders. These orders shall be reduced to writing in the resident's clinical record and signed and dated by the authorized individual receiving the order. Telephone/verbal orders shall be countersigned by the physician within seven days.

F. Use of signature stamps by physicians is allowed when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative office of the nursing facility shall have on file a signed statement to the effect that the physician is the only one who has the stamp and uses it. There shall be no delegation of signature stamps to another individual.

G. At the option of the nursing facility attending physician, any required physician task in a nursing facility may also be satisfied when performed by an advanced practice registered nurse in collaboration with a physician, or Physician Assistant who is working under the direction and supervision of an attending physician, pursuant to his/her licensing board.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9807. Standing Orders

A. Physician's standing orders are permissible but shall be individualized, taking into consideration such things as drug allergies and the pertinent physical condition of the resident.

B. Utilization of over-the-counter drugs shall be documented on the physician's standing orders.

C. Controlled or prescription drugs shall not be on standing orders, and shall be an individual order reduced to

writing on the physician's order sheet as either a routine or pro re nata (PRN) order. Each order shall include the following:

1. name of the medication;
2. strength of the medication;
3. specific dose of the medication (not a dose range);
4. route of administration;
5. reason for administration;
6. time interval between doses for administering the medication;
7. maximum dosage or number of times to be administered in a specific time frame; and
8. when to notify the attending physician if the medication is not effective.

D. Standing orders shall be signed and dated by the attending physician initially and at least annually thereafter.

E. A copy of the standing orders shall be maintained in the resident's active clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter B. Nursing Services

§9821. General Provisions

A. The nursing facility shall have sufficient nursing staff to provide nursing and related services that meet the needs of each resident. The nursing facility shall assure that each resident receives treatments, medications, diets and other health services as prescribed and planned, all hours of each day.

B. Release of a Body by a Registered Nurse. In the absence of a physician in a setting other than an acute care facility, when an anticipated death has apparently occurred, registered nurses may have the decedent removed to the designated funeral home in accordance with the standing order of a medical director/consultant setting forth basic written criteria for a reasonable determination of death. This is not applicable in cases where the death was unexpected.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9823. Nursing Service Personnel

A. The nursing facility shall provide a sufficient number of nursing service personnel consisting of registered nurses, licensed practical nurses, medication attendants certified, and certified nurse aides to provide nursing care to all residents in accordance with resident care plans 24 hours per day.

1. At a minimum, the nursing facility shall provide 2.35 hours of care per patient per day. The director of nursing (DON), the assistant director of nursing (ADON), and nursing department directors may be counted towards the minimum staffing requirements only for the time spent on the shift providing direct and/or hands on resident care services. A maximum of eight ward clerk hours per day can be utilized in the calculation of care hours per resident day.

2. The facility shall post the following information on a daily basis:

- a. the facility name;
- b. the current date;
- c. the resident census; and

d. the total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift:

- i. registered nurses;
- ii. licensed practical nurses; and
- iii. certified nurse aides.

3. The facility shall post the nurse staffing data specified above on a daily basis at the beginning of each shift. The data shall be posted:

- a. in a clear and readable format; and
- b. in a prominent place readily accessible to residents and visitors.

4. The facility shall, upon oral or written request, make nurse staffing data available to the public for review at a cost not to exceed the community standard.

5. Nursing service personnel shall be assigned duties consistent with their education and experience, and based on the characteristics of the resident census and acuity, and nursing skills required to provide care to the residents.

6. Licensed nurse coverage shall be provided 24 hours per day in the nursing facility. The facility shall develop a policy regarding the nursing services provided by licensed nurses. The policy shall be developed in consideration of the following:

- a. the physical layout of the nursing facility;
- b. the acuity of the residents; and
- c. the resident census.

B. Director of Nursing

1. The nursing facility shall designate a registered nurse to serve as the director of nursing services on a full-time basis during the day-tour of duty.

2. The director of nursing services may serve as charge nurse only when the nursing facility has an average daily occupancy of 60 or fewer residents.

3. The director of nursing services shall have responsibilities which include, but are not limited to:

- a. supervising the functions, activities, and training of all nursing personnel;
- b. developing and maintaining standard nursing practice, nursing policy and procedure manuals and written job descriptions for each level of nursing personnel;
- c. coordinating nursing services with other resident services;
- d. designating the charge nurses pursuant to this section;
- e. ensuring that duties of all nursing personnel are clearly defined and assigned in accordance with the level of education, preparation, experience, and licensure;; and
- f. supervision of documentation by nursing personnel.

C. If the director of nursing services has non-nursing administrative responsibilities for the nursing facility on a regular basis, there shall be another registered nurse designated to assist in providing direction of care delivery to residents.

D. The director of nursing may serve in such capacity for only one nursing facility.

E. Charge Nurse. A registered nurse, or a qualified licensed practical nurse, shall be designated as charge nurse by the DON for each tour of duty and is responsible for supervision of the total nursing activities in the nursing facility during each tour of duty.

1. The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific residents during each tour of duty on the basis of staff qualifications, size/physical layout of the nursing facility, characteristics of resident census and acuity, and emotional, social, and nursing care needs of the residents.

F. In building complexes or multi story buildings, each building or floor housing residents shall be considered a separate nursing unit and separately staffed, exclusive of the director of nursing.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9825. Nursing Care

A. Each resident shall receive personal attention and nursing care and services in accordance with his/her condition and consistent with current acceptable standards of nursing practice. Each resident shall receive a comprehensive assessment, and a plan of care shall be developed to meet his/her needs. The plan of care shall be developed within 21 days of admission of the resident to the nursing facility and revised as needed to meet the initial and ongoing needs of the resident.

B. Each resident shall be kept clean, dry, well groomed, and dressed appropriately for the time of day and the environment, recognizing the resident's rights and wishes. Proper body and oral hygiene shall be maintained. Skin care shall be provided to each resident as needed to maintain skin integrity and prevent dryness, scaling, irritation, itching and/or pressure sores.

C. Residents unable to carry out activities of daily living shall receive the necessary services to maintain good nutrition, grooming, personal and oral hygiene.

D. Other Nursing Services. Nursing services shall be provided to the resident to ensure that the needs of the resident are met. These services include the following:

1. Drug Administration. Medications shall be administered only by a licensed physician, licensed/applicant nurse, or the resident (with the approval of the interdisciplinary team as documented in the comprehensive care plan.)

2. The nursing facility shall be cognizant of the mental status of the resident's roommate(s), or other potential problems which could result in abuses of any drugs used by the residents for self-administration.

3. Medications shall be administered in accordance with the nursing facility's established written procedures and the written policies of the pharmaceutical services committee to ensure the following criteria are met:

- a. Drugs to be administered are checked against physician's orders.
- b. The resident is identified before administering the drug.
- c. All medications/treatments are administered and properly charted in accordance with standards of nursing practice. For any medications/treatments not administered, the reason for each medication/treatment omission shall be recorded in the resident's active medical record.
 - i. The drug dosage shall be prepared, administered and recorded by the same person.
 - ii. Medications prescribed for one resident shall not be administered to any other person.

iii. Medication errors and adverse drug reactions shall be immediately reported to the attending physician and recorded in the medical record.

iv. Current medication reference texts or sources shall be kept in all nursing facilities.

E. Restorative nursing care shall be provided for the residents requiring such care.

F. Assistance with eating shall be provided as needed.

G. The nursing facility shall provide the necessary care and services to prevent avoidable pressure ulcers.

H. The nursing facility shall promptly inform the resident, consult with the resident's attending physician, and if known, notify the resident's legal representative, sponsor or designated contact and maintain documentation when there is an accident which results in injury and requires physical intervention, or significant change in the resident's physical, mental or psycho social status.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter C. Dietetic Services

§9831. General Provisions

A. The nursing facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and dietary needs of each resident.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9833. Dietary Service Personnel

A. The nursing facility shall employ a licensed dietitian either full-time, part-time or on a consultant basis. A minimum dietary consultation time of not less than eight hours per month shall be required to ensure nutritional needs of residents are addressed timely. There shall be documentation to support that the consultation time was given.

B. If a licensed dietitian is not employed full-time, the nursing facility shall designate a full-time person to serve as the dietary manager.

C. Residents at nutritional risk shall have a complete nutritional assessment conducted by the consulting dietitian.

D. The nursing facility shall employ sufficient competent support personnel to carry out the functions of the dietary services.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9835. Menus and Nutritional Adequacy

A. Menus shall be planned, approved, signed and dated by a licensed dietitian prior to use in the nursing facility to ensure that the menus meet the nutritional needs of the residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council and the National Academy of Sciences, taking into account the cultural background and food habits of residents. Residents' preferences shall be taken into consideration in the development of menus.

1. Menus shall be written for any therapeutic diet ordered.

2. If cycle menus are used, the cycle shall cover a minimum of three weeks and shall be different each day of the week.

3. Each day's menu shall show the actual date served and shall be retained for six months.

4. Menus for the current week shall be available to the residents and posted where food is prepared and served for dietary personnel. Portion sizes shall be reflected either on the menu or within the recipe used to prepare the meal.

B. All diets shall be prescribed by a licensed practitioner. Each resident's diet order shall be documented in the resident's clinical record. There shall be a procedure for the accurate transmittal of dietary orders to the dietary service and for informing the dietary service when the resident does not receive the ordered diet or is unable to consume the diet, with appropriate action taken.

1. The nursing facility shall maintain a current list of residents identified by name, room number and diet order and such identification shall be accessible to staff during meal preparation and service.

2. A current therapeutic diet manual, approved by a registered dietitian, shall be readily available to attending physicians, nursing staff and dietetic service personnel.

C. The nursing facility shall provide to each resident:

1. at least three meals daily, at regular times comparable to normal mealtimes in the community;

2. food prepared by methods that conserve nutritive value, flavor, and appearance;

3. food that is palatable, attractive and at the proper temperature;

4. food prepared in a form designed to meet individual needs; and

5. substitutes offered of similar nutritional value to residents who refuse food or beverages served.

D. A list of all menu substitutions shall be kept for 30 days.

E. There shall be no more than 14 hours between a substantial evening meal and breakfast the following day. A substantial evening meal is defined as an offering of three or more menu items at one time, one of which includes a high-quality protein such as meat, fish, eggs, or cheese.

F. When a nourishing snack is provided at bedtime, there shall be no more than 16 hours between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span, and a nourishing snack is served.

G. Bedtime nourishments shall be available nightly to all residents.

H. If residents require assistance in eating, food shall be maintained at appropriate serving temperatures until assistance is provided.

I. There shall be a procedure for the accurate documentation, monitoring and reporting of the resident's oral and parenteral intake in the resident's clinical record and incorporation of dietary orders/lab test monitoring into the nutritional plan of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9837. Feeding Assistants

A. Prior to assisting nursing facility residents with feeding, the assistant shall have successfully completed the state-approved training course published by the American Health Care Association, *Assisted Dining: The Role and Skills of Feeding Assistants*.

1. Licensed personnel qualified to teach the course include:

- a. registered nurses;
- b. licensed practical nurses;
- c. dietitians; and
- d. speech therapists.

2. The competency of feeding assistants shall be evaluated by course instructors and supervisory nurses.

3. If feeding assistants transfer between nursing facilities, the receiving nursing facility shall assure competency.

B. Volunteers shall complete the training course except in cases where a family member or significant other is feeding the resident.

C. The clinical decision as to which residents are fed by a feeding assistant shall be made by a registered nurse (RN) or licensed practical nurse (LPN). Such decision shall be based upon the individual nurse's assessment and the resident's latest assessment and plan of care.

1. A physician or speech therapist may override the nurse's decision, if in their professional opinion, it would be contraindicated.

D. The use of a feeding assistant shall be noted on the plan of care.

E. There shall be documentation to show that the residents approved to be fed by feeding assistants have no complicated feeding problems.

1. Feeding assistants may not feed residents who have complicated feeding problems such as difficulty swallowing, recurrent lung aspirations and tube or IV feedings.

F. There shall be documentation of on-going assessment by nursing staff to assure that any complications that develop are identified and addressed promptly.

G. A feeding assistant shall work under the supervision of a licensed RN or LPN and the resident's clinical record shall contain entries made by the supervisory RN or LPN describing services provided by the feeding assistant.

H. Facilities may use feeding assistants at mealtimes or snack times, whenever the nursing facility can provide the necessary supervision.

1. A feeding assistant may feed residents in the dining room or another congregate area.

I. Nursing facilities may use their existing staff to feed residents as long as each non-licensed staff member successfully completes the state-approved training course.

J. Facilities shall maintain a record of all individuals used as feeding assistants who have successfully completed the training course.

K. Residents have the right to refuse to be fed by a feeding assistant.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9839. Equipment and Supplies

A. Special eating equipment and utensils shall be provided for residents who need them. At least a one-week

supply of staple food with a three-day supply of perishable food conforming to the approved menu shall be maintained on the premises.

B. An approved lavatory shall be convenient and properly equipped for dietary services staff use.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9841. Sanitary Conditions

A. All food shall be procured, stored, prepared, distributed and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drinks according to the *LAC Title 51, Public Health Sanitary Code*.

B. Refrigerator temperatures shall be maintained according to the *LAC Title 51, Public Health Sanitary Code*.

C. Hot foods shall leave the kitchen or steam table according to the *LAC Title 51, Public Health Sanitary Code*.

D. In room delivery temperatures shall be maintained according to the *LAC Title 51, Public Health Sanitary Code*.

E. Food shall be transported to residents' rooms in a manner that protects it from contamination while maintaining required temperatures.

F. Refrigerated food which has been opened from its original package shall be covered, labeled and dated.

G. All food shall be procured from sources that comply with all laws and regulations related to food and food labeling.

H. Food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption.

I. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes:

1. maintaining a water temperature in dishwashing 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;

2. maintaining water temperature in low temperature machines at 120 degrees Fahrenheit (or according to the manufacturer's specification or instructions) with a minimum of 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces; or

3. maintaining a wash water temperature of 75 degrees Fahrenheit, for manual washing in a three-compartment sink, with a minimum of 25 ppm of hypochlorite or equivalent, or a minimum of 12.5 ppm of iodine in the final rinse water; or a hot water immersion at 170 degrees Fahrenheit for at least 30 seconds shall be maintained.

J. Dietary staff shall not store personal items within the food preparation and storage areas.

K. A commercial kitchen in a nursing facility shall not be used for resident dining.

L. Dietary staff shall use good hygienic practices.

M. Dietary employees engaged in the handling, preparation and serving of food shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

N. Staff with communicable diseases or infected skin lesions shall not have contact with food if that contact will transmit the disease.

O. There shall be no use of tobacco products in the dietary department.

P. Toxic items such as insecticides, detergents, polishes and the like shall be properly stored, labeled and used.

Q. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids. Containers used in food preparation and utensil washing areas shall be kept covered when meal preparation is completed and when full.

R. All ice intended for human consumption shall be free of visible trash and sediment.

1. ice used for cooling stored food and food containers shall not be used for human consumption.

2. ice stored in machines outside the kitchen shall be protected from contamination.

3. ice scoops shall be stored in a manner so as to protect them from becoming soiled or contaminated between usage.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter D. Pharmaceutical Services

§9851. General Requirements

A. The nursing facility shall provide pharmaceutical services in accordance with accepted professional standards and all appropriate federal, state and local laws and regulations.

Only licensed medical personnel shall be allowed to receive and sign for delivery of controlled drugs.

B. The nursing facility is responsible for ensuring the timely availability of drugs and biologicals for its residents

C. Prescription drugs not covered by Medicaid or Medicare shall be at the expense of the resident. However, attempts should be made to get the attending physician to order a covered medication before the resident incurs any expense.

D. The nursing facility shall provide emergency drugs and biologicals to its residents as necessary and as ordered by a licensed practitioner.

E. The nursing facility shall have an emergency drug kit.

F. The nursing facility shall obtain a permit from the Louisiana Board of Pharmacy for each emergency drug kit.

G. The most current edition of drug reference materials shall be available.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9853. Consultant

A. If the nursing facility does not employ a licensed pharmacist, it shall have a designated consultant pharmacist that provides services in accordance with accepted pharmacy principles and standards. The minimum consultation time shall not be less than one hour per quarter which shall not include drug regimen review activities.

B. There shall be documentation to support that the consultation time was given.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9855. Labeling

A. All drug and biological containers shall be properly labeled by a licensed pharmacist following the guidelines established by the State Board of Pharmacy.

B. The label on prepackaged (unit dose) containers shall follow the established guidelines of the State Board of Pharmacy.

C. Over the counter (non-prescription) medications and biologicals, may be purchased in bulk packaging and shall be plainly labeled with the medication name and strength and any additional information in accordance with the nursing facility's policies and procedures. Over-the-counter medications specifically purchased for a resident shall be labeled as previously stipulated to include the resident's name. The manufacturer's labeling information shall be present in the absence of prescription labeling.

D. The nursing facility shall develop procedures to assure proper labeling for medications provided a resident for a temporary absence.

E. Labeling of Drugs and Biologicals

1. The labeling of drugs and biologicals is based on currently accepted professional principles and includes:

- a. the resident's full name;
- b. physician's name;
- c. full name of pharmacist dispensing;
- d. prescription number;
- e. name and strength of drug;
- f. date of issue and expiration date of all time-dated drugs;

g. name, address, and telephone number of pharmacy issuing the drug; and

h. appropriate accessory and cautionary instructions.

2. Non-legend or over-the-counter drugs may be labeled by the nursing facility with resident's full name and room number not to obscure lot number and expiration date.

F. Medication containers which have soiled, damaged, incomplete, illegible or makeshift labels are to be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers which have no labels are to be destroyed in accordance with state and federal laws.

G. The nursing facility shall have a procedure for the proper identification and labeling of medication brought into the nursing facility from an outside source.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9857. Storage and Preparation

A. All drugs and biologicals shall be stored in a locked area/cabinet and kept at proper temperatures and lighting. The medicine room or medication preparation area shall have an operable sink with hot and cold water, paper towels and a soap dispenser.

1. In nursing facilities with drugs and biologicals stored in a locked area/cabinet in the resident's room, the lavatory located in the room or immediately adjacent shall be deemed acceptable under this provision.

B. Access to drug storage areas shall be limited to licensed nursing personnel, the licensed nursing facility administrator and the consultant pharmacist as authorized in the nursing facility's policy and procedure manual. Any

unlicensed, unauthorized individual (e.g., housekeepers, maintenance personnel, etc.) needing access to drug storage areas shall be under the direct visual supervision of licensed authorized personnel.

1. In nursing facilities with drugs and biologicals stored in a locked area/cabinet in the resident(s) room, residents who have been determined by the interdisciplinary team to be able to safely self-administer drugs shall be allowed to access the drugs.

C. Medication requiring refrigeration shall be kept separate from foods in separate containers within a refrigerator and stored at a temperature range of 36 to 46 degrees Fahrenheit.

1. Laboratory solutions or materials awaiting laboratory pickup shall not be stored in refrigerators with food and/or medication.

2. Medication for "external use only" shall be stored separate from other medication and food.

D. Separately locked, permanently affixed compartments shall be provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

E. Medications of each resident shall be kept and stored in their originally received containers and transferring between containers is forbidden.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9859. Disposition

A. Prescription and over-the-counter (OTC) medications and biologicals are to be disposed of in the following manner:

1. if medication(s) and/or biological(s) are discontinued, or the resident is discharged to the hospital, the nursing facility will retain the medication(s) for up to 60 days and then be destroyed as described in §9859.C.2. Such medications shall be stored in a locked storage area approved by the DON and Consultant Pharmacist.

1. If the resident is deceased, the medication will be disposed of as described in §9859.C.2, unless there is a written order of the attending physician specifying otherwise.

2. If the resident is transferred to another facility, the medication will accompany the resident to the receiving facility on the written order of the attending physician.

3. If the resident is discharged to facility, the remaining supply of ordered and filled medication, including controlled drugs, will accompany the resident facility on the written order of the attending physician.

B. If the resident, designated contact and/or legal representative receives the medications or biologicals, upon written order of the physician, documentation containing the name and the amount of the medication or biological to be received shall be completed and signed by the resident, designated contact and/or legal representative their receipt. This document shall be placed in the resident's clinical record.

C. Expired medication shall not be available for resident or staff use. They shall be destroyed on-site by nursing facility personnel no later than 90 days from their expiration/discontinuation date utilizing the following methods:

1. Controlled drugs shall be destroyed on-site by a licensed health care professional, and witnessed by at least one other licensed health care professional or in accordance with DEA provisions.

a. All controlled substances to be destroyed shall be inventoried and documented on a form developed by the nursing facility's staff, with input from the consultant pharmacist and medical director. The form shall include, at a minimum:

- i. the resident's name;
- ii. medication name;
- iii. strength and quantity of the drug destroyed;
- iv. prescription number;
- v. method and date of destruction; and
- vi. signatures of the licensed health care

professionals destroying the medication and the name of the licensed health care professional witnessing the destruction for each controlled drug destroyed.

b. This form shall be maintained on the nursing facility's premises for 24 months and archived for a minimum of 36 months. These drugs shall also be listed on the resident's individual accumulative drug destruction record.

2. For non-controlled drugs, there shall be documentation of:

- a. the resident's name;
- b. strength and quantity of the drug destroyed;
- c. prescription number;
- d. method and date of destruction; and
- e. signatures of at least two individuals (which shall

be either licensed nurses who are employees of the nursing facility or the consultant pharmacist) witnessing the destruction.

D. Medications of residents transferred to a hospital may be retained until the resident's return. Upon the resident's return, the physician's order shall dictate whether or not the resident is to continue the same drug regimen as previously ordered.

E. Nothing herein, shall preclude a nursing facility from donating unused medications to a provisional pharmacy or to the Department of Corrections or other statutorily approved programs. Medications not donated shall be destroyed using the procedures outlined above.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9861. Administration

A. Drugs and biologicals shall not be administered to residents unless ordered by a practitioner duly licensed to prescribe drugs. Such orders shall be in writing and shall include the practitioner's signature. Each order shall include the following:

1. name of the medication;
2. strength of the medication;
3. specific dose of the medication (not a dose range);
4. route of administration;
5. reason for administration;
6. frequency of administration; and
7. maximum dosage or number of times to be administered in a specific time frame when applicable.

B. Drugs and biologicals shall be administered only by medical personnel or licensed nurses authorized to administer drugs and biologicals under their practice act or as allowed by statutorily designated medication attendants certified (MACS).

C. Drugs and biologicals shall be administered as soon as possible after doses are prepared, not to exceed two hours. They shall be administered by the same person who prepared the doses for administration.

D. If the policies and procedures of a licensed only nursing facility allows for the self-administration of drugs, an individual resident may self-administer drugs if an interdisciplinary team has determined that this practice is safe. The team shall also determine who will be responsible for storage and documentation of the administration of drugs. The resident's care plan shall reflect approval to self-administer medications. If the nursing facility's policy and procedures do not allow self-administration of drugs, this information shall be disclosed prior to admission.

E. All medication errors shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

F. All adverse drug reactions shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

G. Medications not specifically prescribed as to time or number of doses, such as pro re nata (PRN) medications, shall automatically be stopped after a reasonable time that is predetermined by the nursing facility's written policy and procedures. The attending physician shall be notified of an automatic stop order prior to the last dose so that he/she may decide if the administration of the medication is to be continued or altered.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9863. Drug Regimen Review

A. The drug regimen of each resident shall be reviewed as often as dictated by the resident's condition. Drug irregularities shall be reported, in writing, to the resident's attending physician and director of nursing, and these reports shall be acted upon.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9865. Medication Record Keeping

A. General Records

1. All medication administered to residents shall be recorded on a medication administration record (MAR). Each medication shall be documented to include:

- a. name, strength and dosage of the medication;
- b. method of administration to include site, if applicable;
- c. time of administration. The time of administration is defined as one hour before to one hour after the ordered time of administration; and
- d. the initials of persons administering the medication along with a legend of the initials.

2. Medication errors and drug reactions shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

B. Controlled Drugs

1. The nursing facility shall establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate accounting of all controlled drugs received, administered and destroyed or otherwise disposed.

2. Control records of schedule II drugs shall be maintained. The individual resident records shall list each type and strength of drug and the following information:

- a. date;
- b. time administered;
- c. name of resident;
- d. dose;
- e. physician's name;
- f. signature of person administering the dose; and
- g. the balance on hand.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter E. Activity Services

§9871. Activities Program

A. A nursing facility shall provide for an ongoing program of diverse and meaningful activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident.

B. The activities program shall be designed to allow and encourage each resident's voluntary participation and choice of activities based upon his/her specific needs and interest.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9873. Activity Service Personnel

A. The activities program shall be directed by a resident activities director (RAD). The resident activities director shall be responsible to the administrator or his/her designee for administration and organization of the activities program.

B. Responsibilities of the RAD include the following tasks:

1. scheduling and coordinating group activities and special events inside and outside the nursing facility;
2. developing and using outside resources and actively recruiting volunteers to enhance and broaden the scope of the activities program;
3. posting monthly activity calendars in places of easy viewing by applicants/residents and staff; and
4. planning and implementing individual and group activities designed to meet the applicants/residents' needs and interests.

C. Activities Assessments

1. Within 14 days after admission, the RAD shall complete a written assessment of each resident's interests and hobbies and note any illnesses or physical handicaps which might affect participation in activities.

2. The activities assessment shall:
 - a. become the basis for the activities component of the plan of care;
 - b. be signed, dated, and filed with other elements in the medical record;
 - c. identify specific problem/need areas along with specific approaches formulated to meet the problems/needs; and

d. be included in the interdisciplinary staffing.

D. Activity Services Progress Notes. Activity services progress notes shall:

1. be written to document the services provided and/or changes in activity needs or approaches at least every 90 days (quarterly); and

2. document the activity level of residents, specifically describing their day to day activities.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter F. Social Services

§9877. Social Services

A. A nursing facility shall provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

B. It is the responsibility of the nursing facility to identify the medically-related social service needs of the resident and assure that the needs are met by the appropriate disciplines.

C. A nursing facility with more than 120 beds shall employ a qualified psychosocial worker on a full time basis.

1. Qualifications of a social worker. A qualified social worker shall have:

a. a bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and

b. one year of supervised social work experience in a health care setting working directly with individuals.

D. A nursing facility with 120 beds or less shall designate at least one staff member as social services designee (SSD). The SSD is responsible for assuring that the medically related social services needs of each resident are identified and met by the appropriate disciplines.

1. The individual responsible for provision of social services shall:

a. arrange for social services from outside sources or by furnishing the services directly;

b. integrate social services with other elements of the plan or care; and

c. complete a social history.

E. Social History. The SSD shall complete, date, and sign a social history on applicants/residents within seven days after their admission. The history shall include but shall not be limited to the following information:

1. background:

a. age, sex, and marital status;

b. birthplace;

c. religion;

d. cultural and ethnic background;

e. occupation;

f. education;

g. special training or skills; and

h. primary language; and

2. social functioning:

a. living situation and address before admission;

b. names and relationships with family and friends;

c. involvements with organizations and individuals

within the community; and

d. feelings about admission to the nursing facility.

F. Social Needs Assessment

1. The SSD shall also identify and document the needs and medically related social/emotional problems within 14 days after admission.

2. The social services assessment shall become a component of the plan of care written in conjunction with other disciplines and shall be filed in the active medical record.

3. If the initial social assessment concludes that there are no problems or unmet social needs, the social assessment shall state that no social services are required.

G. Participation in Interdisciplinary Staffing. The SSD shall participate in the interdisciplinary staffing.

H. Social Services Progress Notes. Social services progress notes shall:

1. be recorded as often as necessary to document services provided, but at least every 90 days (quarterly) in nursing facilities and as often as necessary to describe changes in social conditions;

2. document the degree of involvement of family and friends, interaction with staff and other residents, and adjustment to the nursing facility and roommate(s);

3. reflect the social needs and functioning;

4. document services in the plan of care are actually being provided; and

5. remain in the active medical chart for three to six months.

I. Vision and Hearing. The nursing facility shall assist the resident in:

1. making appointments;

2. arranging for transportation to and from appointments; and

3. locating assistance from community and charitable organizations when payment is not available through Medicaid, Medicare, or private insurance.

J. Dental

1. The nursing facility shall provide or obtain from an outside resource, the following dental services to meet the needs of each resident:

a. routine dental services to the extent covered under the state plan; and

b. emergency dental services.

2. The nursing facility shall, if necessary, assist the resident:

a. in making appointments;

b. in arranging for transportation to and from the dentist's office; and

c. by promptly referring residents with lost or damaged dentures to a dentist.

K. The nursing facility shall establish policies and procedures for ensuring the confidentiality of all social information. Records shall reflect each referral to an outside agency and shall include the applicant/resident's written consent to release the information.

L. The same qualifications apply to Medicare skilled nursing facilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter G. Rehabilitation Services

§9881. Delivery of Services

A. Rehabilitative services, when provided in the nursing facility, shall be delivered in a safe and accessible area. Rehabilitation services shall be provided under the written order of the resident's attending physician. These services shall be provided by appropriately credentialed individuals.

B. Specialized services shall be specified in the resident's plan of care. The nursing facility shall verify that the resident is receiving the specialized services as determined by the Level II authority.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9883. Record Keeping

A. An initial assessment established by the appropriate therapist and a written rehabilitation plan of care shall be developed. The resident's progress shall be recorded by the therapist at the time of each visit. This information shall be maintained in the resident's clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter H. Resident Clinical Records and Financial Information

§9887. General Provisions

A. The nursing facility shall maintain a clinical record on each resident in accordance with accepted professional standards and practices. Each resident's clinical record shall be complete, accurately documented, readily accessible and systematically organized to facilitate retrieving and compiling information.

B. Each resident's personal financial information shall be protected in compliance with all applicable federal, state and local laws, rules and regulations.

C. Resident records that are created, modified, maintained archived, retrieved or transmitted in an electronic format shall be in compliance with all applicable federal, state and local laws, rules and regulations.

D. Availability of Records. The nursing facility shall make necessary records available to appropriate state and federal personnel at reasonable times. Records shall include but shall not be limited to the following:

1. personal property and financial records;
2. all medical records; and

NOTE: This includes records of all treatments, drugs, and services for which vendor payments have been made, or which are to be made, under the Medical Assistance Program. This includes the authority for and the date of administration of such treatment, drugs, or services. The nursing facility shall provide sufficient documentation to enable LDH to verify that each charge is due and proper prior to payment.

3. all other records which LDH finds necessary to determine a nursing facility's compliance with any federal or state law, rule, or regulation promulgated by the Department of Health and Human Services (DHHS) or by LDH.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9889. Maintenance of Records

A. The overall supervisory responsibility for the resident record service shall be assigned to a responsible employee of the nursing facility.

B. All hand-written or typed entries in the clinical record shall be legible, dated and signed.

C. If electronic signatures are used, the nursing facility shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of any computer generated signature.

D. If a facsimile communications system (fax) is used, the nursing facility shall take precautions when thermal paper is used to ensure that a legible copy is retained as long as the clinical record is retained.

E. A nursing facility record may be kept in any written, photographic, microfilm or other similar method or may be kept by any magnetic, electronic, optical or similar form of data compilation which is approved for such use by the department.

F. No magnetic, electronic, optical or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

G. A nursing facility may, at its discretion, cause any nursing facility record or part to be microfilmed, or similarly reproduced, in order to accomplish efficient storage and preservation of nursing facility records.

H. Upon an oral or written request, the nursing facility shall give the resident or his/her legal representative access to all records pertaining to himself/herself including current clinical records within 24 hours excluding weekends and holidays. After receipt of his/her records for inspection, the nursing facility shall provide upon request and two working days' notice, at a cost consistent with the provisions of R.S. 40:1299(A)(2)(b), photocopies of the records or any portions thereof.

I. The nursing facility shall ensure that all clinical records are completed within 90 days of discharge, transfer or death. All information pertaining to a resident's stay shall be centralized in the clinical record.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9891. Content

A. The clinical record shall contain sufficient information to identify the resident clearly, to justify the diagnosis and treatment, and to document the results accurately.

B. At a minimum, each clinical record shall contain:

1. sufficient information to identify the resident;
2. physician orders;
3. progress notes by all practitioners and professional personnel providing services to the resident;
4. a record of the resident's assessments;
5. the plan of care;
6. entries describing treatments and services provided; and
7. reports of all diagnostic tests and procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9893. Confidentiality

A. The nursing facility shall safeguard clinical record information against loss, destruction or unauthorized use. The nursing facility shall ensure the confidentiality of resident records, including information in a computerized record system, except when release is required by transfer to another health care institution, law, third party payment contract or the resident. Information from, or copies of, records may be released only to authorized individuals, and the nursing facility shall ensure that unauthorized individuals cannot gain access to or alter resident records.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9895. Retention

A. Clinical records shall be retained for a minimum of five years following a resident's discharge or death, unless the records are pertinent to a case in litigation. In such instance, they shall be retained indefinitely or until the litigation is resolved.

B. A nursing facility which is closing shall notify the department of their plan for the disposition of residents' clinical records in writing at least 14 days prior to cessation of operation.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Chapter 99. Nursing Facilities

Subchapter A. Ancillary Services

§9901. Radiology and other Diagnostic Services

A. The nursing facility shall arrange for the provision of radiology and other diagnostic services to meet the needs of its residents. The nursing facility is responsible for the quality and timeliness of the services and shall:

1. arrange for the provisions of radiology and other diagnostic services only when ordered by the attending physician;
2. promptly notify the attending physician of the findings;
3. assist resident in making transportation arrangements to and from the source of service as needed;
4. file in the resident's clinical record signed and dated reports of X-ray and other diagnostic services.

B. If the nursing facility provides its own diagnostic services, the services shall meet the applicable conditions of participation of hospitals contained in 42 CFR 482.26.

C. If the nursing facility does not provide diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that is approved to provide these services.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9903. Laboratory Services

A. The nursing facility shall arrange for the provision of clinical laboratory services to meet the needs of the residents. The nursing facility is responsible for the quality and timeliness of the services and shall:

1. provide or obtain laboratory services only when ordered by the attending physicians;
2. promptly notify the attending physician of the findings; and
3. assist resident in making transportation arrangements to and from the services as needed.

B. A nursing facility performing any laboratory service or test shall have appealed to CMS or received a certificate of waiver or a certificate of registration.

C. An application for a certificate of waiver may be needed if the nursing facility performs only the following tasks on the waiver list:

1. dipstick or table reagent urinalysis;
2. fecal occult blood;
3. erythrocyte sedimentation rate;
4. hemoglobin;
5. blood glucose by glucose monitoring
6. devices cleared by Food and Drug Administration (FDA) specifically for home use;
7. spun micro hematocrit;
8. ovulation test; and
9. pregnancy test.

D. Appropriate staff shall file in the residents' clinical record signed and dated reports of clinical laboratory services.

E. If the nursing facility provides its own laboratory services, the services shall meet the applicable conditions for coverage of services furnished by independent laboratories.

F. If the nursing facility provides blood bank and transfusion services it shall meet the applicable conditions for independent laboratories and hospital laboratories and hospital laboratories at 42 CFR 482.27.

G. If the nursing facility laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be approved for participation in the Medicare Program either as a hospital or an independent laboratory.

H. If the nursing facility does not provide laboratory services on site, it shall have an agreement to obtain these services from a laboratory that is approved for participation in the Medicare Program either as a hospital or as an independent laboratory.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter B. Physical Environment

§9911. General Provisions

A. The nursing facility shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

B. The nursing facility shall provide a safe, clean, orderly, homelike environment.

C. If the nursing facility determines that a licensing provision of this Subchapter B prohibits the provision of a culture change environment, the nursing facility may submit a written waiver request to the Health Standards Section (HSS) of the Department of Health (LDH), asking that the provision be waived and providing an alternative to the licensing provision of this subchapter. The department shall consider such written waiver request, shall consider the health and safety concerns of such request and the proposed

alternative, and shall submit a written response to the nursing facility within 60 days of receipt of such waiver request.

D. Any construction-related waiver or variance request of any provision of the *LAC Title 51, Public Health Sanitary Code* shall be submitted in writing to the state health officer for his/her consideration.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9913. Nurse/Care Team Work Areas

A. Each floor and/or household of a nursing facility shall have a nurse/care team work area in locations that are suitable to perform necessary functions. These nurse/care team work areas may be in centralized or decentralized locations, as long as the locations are suitable to perform necessary functions.

1. Each centralized nurse/care team area shall be equipped with working space and accommodations for recording and charting purposes by nursing facility staff with secured storage space for in-house resident records.

a. Exception. Accommodations for recording and charting are not required at the central work area where decentralized work areas are provided.

2. Each decentralized work area, where provided, shall contain working space and accommodations for recording and charting purposes with storage space for administrative activities and in-house resident records.

3. The nurse/care team work areas shall be equipped to receive resident calls through a communication system from resident rooms, toileting and bathing facilities.

a. In the case of an existing centralized nurse/care team work area, this communication may be through audible or visible signals and may include wireless systems.

b. In those facilities that have moved to decentralized nurse/care team work areas, the facility may utilize other electronic systems that provide direct communication from the resident to the staff.

B. There shall be a medicine preparation room or area. Such room or area shall contain a work counter, preparation sink, refrigerator, task lighting and lockable storage for controlled drugs.

C. There shall be a clean utility room on each floor designed for proper storage of nursing equipment and supplies. Such room shall contain task lighting and storage for clean and sterile supplies.

D. There shall be a separate soiled utility room designed for proper cleansing, disinfecting and sterilizing of equipment and supplies. At a minimum, it shall contain a clinical sink or equivalent flushing-rim sink with a rinsing hose or bed pan sanitizer, hand washing facilities, soiled linen receptacles and waste receptacle. Each floor of a nursing facility shall have a soiled utility room.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9915. Resident Rooms

A. Resident bedrooms shall be designed and equipped for adequate nursing care, comfort, and privacy of residents. Each resident bedroom shall have a floor, walls, and ceilings

in good repair and so finished as to enable satisfactory cleaning.

B. Each resident's bedroom shall have a floor at or above grade level, shall accommodate a maximum of two residents, and be so situated that passage through another resident's bedroom is unnecessary.

1. Exception. Resident bedrooms in existing nursing facilities shall be permitted to accommodate no more than four residents unless the cost of renovations to the existing nursing facility exceeds the values stipulated by R.S. 40:1574.

C. Private resident bedrooms shall measure at least 121 square feet of bedroom area, exclusive of wardrobes, closet space, vestibules or toilet rooms, and shall have a clear width of not less than 11 feet.

D. Double occupancy resident bedrooms containing two beds shall measure at least 198 square feet of bedroom area, exclusive of wardrobes, closet space, vestibules or toilet rooms, and shall have a clear width of not less than 11 feet.

E. In existing nursing facilities, or portions thereof, where plans were approved by the department and the Office of the State Fire Marshal prior to January 20, 1998, there shall be at least three feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery.

F. Each resident's bedroom shall have at least one window to the outside atmosphere with a maximum sill height of 36 inches. Windows with sills less than 30 inches from the floor shall be provided with guard rails.

1. Each resident's bedroom window shall be provided with shades, curtains, drapes, or blinds.

2. Operable windows shall be provided with screens.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9917. Resident Room Furnishings

A. Each resident shall be provided with an individual bed of proper size and height for the convenience of the resident and equipped with:

1. a clean supportive frame in good repair;

2. a clean, comfortable, well-constructed mattress at least 5 inches thick with waterproof ticking and correct size to fit the bed;

3. a clean, comfortable pillow shall be provided for each bed with extra pillows available to meet the needs of the residents;

4. adequate bed rails, when necessary, to meet the needs of the resident; and

5. sheets and covers appropriate to the weather and climate.

B. Screens or noncombustible ceiling-suspended privacy curtains which extend around the bed shall be provided for each bed in multi-resident bedrooms to assure resident privacy. Total visual privacy without obstructing the passage of other residents either to the corridor, closet, lavatory or adjacent toilet room, nor fully encapsulating the bedroom window shall be provided.

C. Each resident shall be provided with a call device located within reach of the resident.

D. Each resident shall be provided a bedside table with at least two drawers. As appropriate to resident needs, each resident shall have a comfortable chair with armrests, waste receptacle, and access to mirror unless medically contraindicated.

1. Each resident who has tray service to his/her room shall be provided with an adjustable overbed table positioned so that the resident can eat comfortably.

E. Each resident shall be provided an individual closet that has minimum dimensions of 1 foot 10 inches in depth by 2 feet 6 inches in width. A clothes rod and shelf shall be provided that is either adjustable or installed at heights accessible to the resident. Accommodations shall be made for storage of full-length garments. The shelf may be omitted if the closet provides at least two drawers. The following exceptions may apply.

1. Individual wardrobe units having nominal dimensions of 1 foot 10 inches in depth by 2 feet 6 inches in width are permitted. A clothes rod and shelf shall be provided that is either adjustable or installed at heights accessible to the resident. Accommodations shall be made for storage of full-length garments. The shelf may be omitted if the unit provides at least two drawers.

2. In existing nursing facilities, or portions thereof, where plans were approved by the department and OSFM prior to January 20, 1998, each resident shall be provided an individual wardrobe or closet that has nominal dimensions of 1 foot 10 inches in depth by 2 feet in width.

F. Each resident shall be provided with a bedside light or over-the-bed light capable of being operated from the bed.

1. In nursing facilities, or portions thereof, where plans were approved by the department and OSFM prior to May 1, 1997 shall be exempt from this provision.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9919. Specialized Care Units, Restraints, and Seclusion

A. Specialized Care Units

1. Nursing facilities may establish a distinct unit that benefits residents living with severe dementia, Alzheimer's disease, or other disease process or condition which severely impairs their ability to recognize potential hazards. Such units shall not be established for the sole purpose of housing individuals with mental illness.

2. Specialized care units may involve locking mechanisms provided that such locking arrangements are approved by OSFM and satisfy the requirements established by OSFM.

3. Nursing facilities providing care and services on a specialized care unit shall develop admission and discharge criteria. There shall be documentation in the resident's record to indicate the unit is the least restrictive environment possible, and placement in the unit provides a clear benefit to the resident.

4. Guidelines for admission and discharge shall be provided to the resident, the resident's family, and/or the resident's legal representative.

5. Specialized care units shall be designed and staffed to provide the care and services necessary for the resident's needs to be met.

a. The unit shall have designated space for dining and/or group and individual activities that is separate and apart from the resident bedrooms and bathrooms.

b. The dining space shall contain tables for eating within the unit.

c. The activities area(s) shall contain seating, and be accessible to the residents within the unit.

6. There shall be sufficient staff to respond to emergency situations in the unit at all times.

7. The facility shall ensure that admission to the specialized care unit imposes restrictions on residents' exercise of their rights only to the extent absolutely necessary to protect the health and safety of themselves and other residents.

8. Care plans shall address the reasons for the resident being in the unit and how the nursing facility is meeting the resident's continuing needs.

9. All staff designated to provide care and services on specialized care units shall have training regarding unit policies and procedures, admission and discharge criteria, emergency situations and the individual and special needs of the residents on the unit.

10. Admission to a specialized care unit shall be in compliance with R.S. 40:1299.53 and 40:2010.8.

B. Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

C. Seclusion. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9921. Hand-Washing Stations, Toilet Rooms and Bathing Facilities

A. A hand-washing station shall be provided in each resident room.

1. Omission of this station shall be permitted in a single-bed or two-bed room when a hand-washing station is located in an adjoining toilet room that serves that room only.

B. Each resident shall have access to a toilet room without having to enter the corridor area. In nursing facilities built prior to August 26, 1958, each floor occupied by residents shall be provided with a toilet room and hand-washing station.

1. One toilet room shall serve no more than two residents in new construction or no more than two resident rooms in renovation projects. In nursing facilities built prior to August 26, 1958, toilets and hand-washing stations shall each be provided at a rate of 1 per 10 beds or fraction thereof.

2. Toilet rooms shall be easily accessible, conveniently located, well lighted, and ventilated to the outside atmosphere. Fixtures shall be of substantial construction, in good repair and of such design to enable satisfactory cleaning.

3. Separate male and female toilet rooms for use by staff and guests shall be provided.

4. Each toilet room shall contain a toilet, hand-washing station and mirror.

5. Doors to single-use resident toilet rooms shall swing out of the room.

6. Doors to single-use resident toilet rooms shall be permitted to utilize privacy locks that include provisions for emergency access.

7. In multi-use toilet rooms provisions shall be made for resident privacy.

C. Each floor occupied by residents shall be provided with a bathing facility equipped with a toilet, hand-washing station, and bathing unit consisting of a bathtub, shower, or whirlpool unit.

1. A minimum of one bathtub, shower, or whirlpool unit shall be provided for every 20 residents, or fraction thereof, not otherwise served by bathing facilities in resident rooms. In nursing facilities built prior to August 26, 1958, showers or tubs shall each be provided at a rate of 1 per 15 beds or fraction thereof.

2. Bathing facilities shall be easily accessible, conveniently located, well lighted and ventilated to the outside atmosphere. Fixtures shall be of substantial construction, in good repair, and of such design to enable satisfactory cleaning.

3. Tub and shower bottoms shall be of nonslip material. Grab bars shall be provided to prevent falling and to assist in maneuvering in and out of the tub or shower.

4. Separate bathing facilities shall be provided for employees who live on the premises.

5. In multi-use bathing facilities provisions shall be made for resident privacy.

6. Wall switches for controlling lighting, ventilation, heating or any other electrical device shall be so located that they cannot be reached from a bathtub, shower, or whirlpool.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9923. Dining and Resident Activities

A. The nursing facility shall provide one or more areas designated for resident dining and activities.

B. Smoking is not permitted in the dining room and other public areas as specified by R.S. 40:1300.256(B)(11).

C. Dining room(s) or dining area(s) shall be sufficient in space and function to accommodate the needs of the residents without restriction. Dining areas shall be adequately furnished, well lighted, and well ventilated. Dining areas shall be sufficient in space to comfortably accommodate the persons who usually occupy that space, including persons who utilize walkers, wheelchairs and other ambulating aids or devices.

D. There shall be at least one well lighted and ventilated living/community room with sufficient furniture.

E. There shall be sufficient space and equipment to comfortably accommodate the residents who participate in group and individual activities. These areas shall be well lighted and ventilated and be adequately furnished to accommodate all activities.

F. Areas used for corridor traffic or for storage of equipment shall not be considered as areas for dining or activities.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9925. Linen and Laundry

A. The nursing facility shall have available, at all times, a quantity of bed and bath linen essential for proper care and comfort of residents.

B. All linen shall be in good condition.

C. All used linen shall be bagged or enclosed in appropriate containers for transportation to the laundry.

D. Soiled linen storage areas shall be ventilated to the outside atmosphere.

E. Linen from residents with a communicable disease shall be bagged, in readily identifiable containers distinguishable from other laundry, at the location where it was used.

F. Linen soiled with blood or body fluids shall be placed and transported in bags that prevent leakage.

G. If hot water is used, linen shall be washed with detergent in water at least 160 degrees Fahrenheit for 25 minutes. If low-temperature (less than or equal to 158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing, at proper use concentration, shall be used.

H. Clean linen shall be transported and stored in a manner to prevent its contamination.

I. Nursing facilities providing in-house laundry services shall have a laundry system designed to eliminate crossing of soiled and clean linen.

J. Nursing facilities that provide in house laundry services and/or household washers and dryers shall have policies and procedures to ensure safety standards, infection control standards and manufacturer's guidelines are met.

K. There shall be hand washing facilities available for use in any designated laundry area.

L. Provisions shall be made for laundering personal clothing of residents.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9927. Equipment and Supplies

A. The nursing facility shall maintain all essential mechanical, electrical, and resident care equipment in safe operating condition.

B. Therapeutic, diagnostic, and other resident care equipment shall be maintained and serviced in accordance with the manufacturer's recommendations.

C. Wheelchairs shall be available for emergency use by residents who are not fully ambulatory.

D. Equipment for taking vital signs shall be maintained.

E. At least one oxygen tank or resource of oxygen shall be readily accessible for emergency use.

F. An adequate number of battery-generated lamps or flash lights shall be available for staff use in case of electrical power failure.

G. There shall be at least one telephone adapted for use by residents with hearing impairments at a height accessible to bound residents who use wheelchairs and be available for resident use where calls can be made without being overheard.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9929. Other Environmental Conditions

A. A hard surfaced off-the-road parking area to provide parking for one car per five licensed beds shall be provided. This is a minimum requirement and may be exceeded by local ordinances. Where this requirement would impose an unreasonable hardship, a written request for a lesser amount may be submitted to the department for waiver consideration.

B. The nursing facility shall make arrangements for an adequate supply of safe potable water even when there is a loss of normal water supply. Service from a public water supply shall be used, if available. Private water supplies, if used, shall meet the requirements of the *LAC Title 51, Public Health Sanitary Code*.

C. An adequate supply of hot water shall be provided which shall be adequate for general cleaning, washing, and sterilizing of cooking and food service dishes and other utensils, and for bathing and laundry use. Hot water supply to the hand washing and bathing faucets in the resident areas shall have automatic control to assure a temperature of not less than 100 degrees Fahrenheit, nor more than 120 degrees Fahrenheit, at the faucet outlet. Supply system design shall comply with the *Louisiana State Plumbing Code* and shall be based on accepted engineering procedures using actual number and types of fixtures to be installed.

D. The nursing facility shall be connected to the public sewerage system, if such a system is available. Where a public sewerage is not available, the sewerage disposal system shall conform to the requirements of the *LAC Title 51, Public Health- Sanitary Code*.

E. The nursing facility shall maintain a comfortable sound level conducive to meeting the need of the residents.

F. All plumbing shall be properly maintained and conform to the requirements of the *LAC Title 51, Public Health Sanitary Code*.

G. All openings to the outside atmosphere shall be effectively screened. Exterior doors equipped with closers in air conditioned buildings need not have screens.

H. Each room used by residents shall be capable of being heated to not less than 71 degrees Fahrenheit in the coldest weather and capable of being cooled to not more than 81 degrees Fahrenheit in the warmest weather.

I. Lighting levels in all areas shall be adequate to support task performance by staff personnel and independent functioning of residents. A minimum of 6 foot to 10 foot candelas over the entire stairway, corridors, and resident rooms measured at an elevation of 30 inches above the floor and a minimum of 20 foot to 30 foot candelas over areas used for reading or close work shall be available.

J. Corridors used by residents shall be equipped on each side with firmly secured handrails, affixed to the wall. Handrails shall comply with the requirements of the state adopted accessibility guidelines.

K. There shall be an effective pest control program so that the nursing facility is free of pest and rodent infestation.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

Subchapter C. Infection Control and Sanitation

§9941. Organization

A. A nursing facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

B. No later than September 1 of each year, the nursing facility shall provide information from the LDH website to the residents on the risks associated with pneumonia and the availability of the pneumococcal immunization.

C. No later than September 1 of each year, the nursing facility shall provide information from the LDH website to the residents on the risks associated with zoster, also known as shingles, and how to protect oneself against the varicella-zoster virus.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9943. Infection Control Program

A. An infection control committee shall be established consisting of the medical director and representatives from at least administration, nursing, dietary and housekeeping personnel.

B. The committee shall establish policies and procedures for investigating, controlling and preventing infections in the nursing facility, and monitor staff performance to ensure proper execution of policies and procedures.

C. The committee shall approve and implement written policies and procedures for the collection, storage, handling, and disposal of medical waste.

D. The committee shall meet at least quarterly, documenting the content of its meetings.

E. Reportable diseases as expressed in the *LAC Title 51, Public Health Sanitary Code* shall be reported to the local parish health unit of OPH.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9945. Employee Health Policies and Procedures

A. Nursing facility employees with a communicable disease or infected skin lesions shall be prohibited from direct contact with residents or their food, if direct contact will transmit the disease.

B. The nursing facility shall require staff to wash their hands after each direct resident contact for which hand washing is indicated. An antimicrobial gel or waterless cleaner may be used between resident contact, when appropriate. The nursing facility shall follow the current Centers for Disease Control's *Guideline for Hand Washing*.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9947. Isolation

A. When the infection control program determines that a resident needs isolation to prevent the spread of infection, the nursing facility shall isolate the resident according to the most current Centers for Disease Control's recommendations.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9949. Housekeeping and Maintenance

A. Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and safe interior shall be provided.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9951. Nursing Care Equipment

A. Bedpans, urinals, emesis basins, wash basins and other personal nursing items shall be thoroughly cleaned after each use and sanitized as necessary. Water pitchers shall be sanitized as necessary.

B. All catheters, irrigation sets, drainage tubes or other supplies or equipment for internal use, and as identified by the manufacturer as one time use only, shall be disposed of in accordance with the manufacturer's recommendations.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

§9953. Waste and Hazardous Materials Management

A. The nursing facility shall have a written and implemented waste management program that identifies and controls wastes and hazardous materials. The program shall comply with all applicable laws and regulations governing wastes and hazardous materials.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:

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 no impact on family functioning, stability or autonomy as described in R.S. 49:972.

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.

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 no direct or indirect cost to the provider to provide the same level of service. These provisions 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 Cecile Castello, Health Standards Section, P.O. Box 3767, Baton

Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, September 29, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Nursing Facilities—Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 16-17. It is anticipated that \$22,032(SGF) will be expended in FY 16-17 for the state's administrative expense for the promulgation of this proposed rule and the final rule.

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

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

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

This proposed Rule repeals and replaces the nursing homes minimum licensing standards in its entirety in order to include provisions related to the culture change movement in nursing facilities and to incorporate these provisions under a single comprehensive Rule in Part I, Title 48 of the Louisiana Administrative Code. It is anticipated that the implementation of this proposed rule will have no economic costs or benefits to nursing facilities in FY 16-17, FY 17-18 and FY 18-19.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello
Section Director
1608#075

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Emergency Response Network Board**

Trauma Program Recognition
(LAC 48:I.Chapter 197)

Notice is hereby given that the Department of Health, Louisiana Emergency Response Network Board, has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and intends to promulgate

LAC 48.I.197101-197107, rules and regulations for recognition of a trauma program.

Pursuant to Act 248 of the 2004 Regular Session of the Louisiana Legislature, the Louisiana Emergency Response Network and Louisiana Response Network Board were created within the Department of Health. The Louisiana Emergency Response Network Board is authorized by R.S. 40:2846(A) to adopt rules and regulations to carry into effect the provisions of R.S. 40:2841 et seq. Pursuant to R.S. 40:2841, the legislative purpose of the Louisiana Emergency Response Network is to safeguard the public health, safety and welfare of the people of this state against unnecessary trauma and time-sensitive related deaths and incidents of morbidity due to trauma.

R.S. 40:2845(A)(1) requires the Louisiana Emergency Response Network Board to establish and maintain a statewide trauma communication center for resource coordination of medical capabilities for participating trauma centers as defined by R.S. 40:2171 and emergency medical services. The board is authorized to promulgate protocols for the transport of trauma and time-sensitive ill patients. The protocols so adopted consider trauma programs in addition to trauma centers. The rules provide for trauma program recognition, and are designated as Chapter 197, Trauma Program Recognition, LAC 48:I, Sections 197101-197107.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 15. Emergency Response Network

Chapter 197. Trauma Program Recognition

§197101. Generally

A. The goal of the Louisiana Emergency Response Network Board is to establish a trauma system that includes one verified trauma center in each region of the state. Trauma program recognition in excess of this goal will be determined utilizing a needs based assessment. The LERN Communication Center coordinates access to the trauma system by providing accurate and professional routing of patients experiencing time sensitive illness to the definitive care facility, which includes trauma programs recognized according to these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2846(A), R.S. 40:2845(A)(1) and R.S. 9:2798.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network, LR 42:

§197103. Purpose

A. LERN recognizes the opportunity to reduce the morbidity and mortality of trauma patients in Louisiana in areas without an existing Level I or Level II trauma center or an existing Level II or Level III trauma program through this process which recognizes the achievement of specific benchmarks in hospitals actively pursuing Levels II or III trauma center verification through the American College of Surgeons (ACS).

B. The purpose of this Chapter is to define the qualifications, procedure, and requirements for hospitals seeking trauma center verification by the ACS to be recognized by LERN as achieving the core components of a trauma program and thus qualified for recognition as a trauma program.

C. The criteria for trauma program recognition are drawn from *Resources for Optimal Care of Injured Patient 2014* published by the ACS.

D. Trauma program recognition is distinct and different from the Trauma Center certification by the state. To be certified as a trauma center, a hospital must satisfy the requirements of R.S. 40:2172 and 2173.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2846(A), R.S. 40:2845(A)(1) and R.S. 9:2798.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network, LR 42:

§197105. Qualifications for LERN Trauma Program Recognition

A. The hospital must be located in a LERN region that does not have an existing ACS verified Level I or Level II trauma center.

B. A hospital providing care to trauma patients in a LERN region without an existing ACS verified Level I or Level II trauma center or without an existing Level II or Level III trauma program is eligible for trauma program recognition upon meeting the requirements of this rule.

C. If there is an existing LERN recognized Level II or Level III trauma program in the LERN region, the hospital must complete the most current version of the ACS needs based assessment of trauma systems tool (ACS NBATS). If the number of trauma centers allocated by the tool is less than or equal to the number of existing trauma programs in the region, the hospital is not eligible for trauma program recognition.

D. A hospital must be in the process of working toward ACS verification to be eligible for trauma program recognition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2846(A), R.S. 40:2845(A)(1) and R.S. 9:2798.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network, LR 42:

§197107. Procedure for Trauma Program Recognition

A. A hospital must complete the LERN approved form, "Application for Recognition of Trauma Program".

B. The hospital CEO must complete and sign the LERN approved trauma program checklist/attestation for the applicable trauma program level.

1. By this attestation, the hospital CEO ensures 24/7/365 availability of the resources listed.

2. The attestation must be validated by a site visit by LERN staff.

3. Upon CEO attestation and/or site visit, if it is determined by the LERN executive committee in conjunction with the LERN trauma medical director, that the required benchmarks are not in place the hospital will not be eligible for trauma program verification.

C. After satisfying the requirements of A. and B. above, the hospital will be recognized as a trauma program and such recognition will be added to the LERN resource management screen for the purpose of routing trauma patients.

D. To maintain trauma program recognition, the hospital must schedule an ACS verification or consultation site visit for the desired trauma level within 12 months of LERN acceptance of the trauma program checklist/attestation.

1. If an ACS verification or consultation site visit is not scheduled within 12 months of the signed checklist/attestation, the "trauma program" indicator on LERN resource management screen will be removed.

E. After a consultation visit for the desired trauma level, the hospital has 1 year to achieve verification by the ACS or

the trauma program indicator will be removed on the LERN resource management screen.

1. If the hospital fails the ACS verification visit and a focused review visit, the hospital will lose trauma program status. The trauma program indicator will be removed on the LERN resource management screen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2846(A), R.S. 40:2845(A)(1) and R.S. 9:2798.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network, LR 42:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the proposed Rule will have no impact.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rules that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rules on small business.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of these proposed Rules have been considered. It is anticipated that these proposed Rules will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and no increase on direct or indirect cost. The proposed Rule 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 relative to the proposed Rule until 4:30 p.m., Monday, September 12, 2016 to Paige Hargrove, Louisiana Emergency Response Network, 14141 Airline Hwy., Suite B, Building 1, Baton Rouge, LA 70817, or via email to paige.hargrove@la.gov.

Paige Hargrove
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Trauma Program Recognition

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Louisiana Emergency Response Network (LERN) Board proposes to amend the Louisiana Administrative Code (LAC), Title 48, Subpart 15 Emergency Response Network to add Chapter 197 – Trauma Program Recognition consisting of Sections 197101 through Section 197107. The LERN Board is authorized to promulgate protocols for the transport of trauma and time-sensitive ill patients. The Board has existing protocols to consider trauma programs in addition to trauma centers when transporting trauma and time-sensitive ill patients. The proposed rule codifies the existing procedure for hospitals seeking Trauma Program recognition.

Other than the cost to publish in the *State Register*, which is estimated to be \$958 in FY 17, it is not anticipated that the proposed rule will result in any costs or savings to LERN or any state or local governmental unit.

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

There is no anticipated effect on revenue collections of state or local governmental units as a result of this proposed rule change.

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

Under the proposed rule, trauma and time-sensitive ill patients will be routed to the nearest trauma center certified by the state or the nearest trauma program recognition by LERN, which may improve patient outcomes. The proposed rule does not preclude patient choice.

Receiving trauma program recognition by LERN is a voluntary process. LERN anticipates that hospitals meeting the trauma program recognition requirements will experience an increase in trauma volume. The proposed rule does not restrict any hospital from pursuing Level I or Level II Trauma Center verification by the American College of Surgeons (ACS) or designation by the State.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment as a result of the proposed rule change.

Paige Hargrove
Executive Director
1608#061

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 31—Holding Company
(LAC 37:XIII.Chapter 1)

Under the authority of the *Louisiana Insurance Code*, R.S. 22.1 et seq. and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. R.S. 22:691.11 and R.S. 22:691.27, the Department of Insurance proposes to amend Regulation 31. The purpose of the amendments is to assist the Department of Insurance in

effectively regulating the National Association of Insurance Commissioner's (NAIC) model regulation regarding the Insurance Holding Company System Regulatory Law.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 1. Regulation 31—Holding Company

§101. Purpose

A. The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of Act 294 of the 2012 Regular Legislative Session to be comprised of R.S. 22:691.1-691.27 of the *Insurance Code*. The information called for by this regulation is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1295 (July 2015), LR 42:

§103. Severability Clause

A. If any provision of this regulation, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1295 (July 2015), LR 42:

§105. Definitions

A. For purposes of this Rule, the definitions detailed below shall apply.

Executive Officer—chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

The Act—the Insurance Holding Company System Regulatory Act (R.S. 22:691.1-691.27).

Ultimate Controlling Person—that person or persons who is not controlled by any other person. Person shall be defined pursuant to R.S. 22:691.2(7).

B. Unless the context otherwise requires, other terms found in this regulation and in R.S. 22:691.2 are used as defined in the Act. Other nomenclature or terminology is according to the *Insurance Code*, or industry usage if not defined by the code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1295 (July 2015), LR 42:

§111. Amendments to Form A

A. The applicant shall promptly advise the commissioner of any changes in the information so furnished on form A arising subsequent to the date upon which such information was furnished but prior to the commissioner's disposition of the application. If change(s) to the Form A should occur after the commissioner's approval of the application but prior to the closing date of the sale, the applicant shall be required to notify the Commissioner in writing within fifteen days of such change(s). Upon receipt of such notice of change(s), the Commissioner has the option to modify or rescind his approval and may require a new hearing on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1296 (July 2015), LR 42:

§115. Annual Registration of Insurers—Statement Filing

A. An insurer required to file an annual registration statement pursuant of R.S. 22:691.6 shall furnish the required information on form B, hereby made a part of this regulation. An ultimate controlling person (an individual) or persons (more than one individual) of a domestic insurer licensed and writing only in Louisiana may file an unaudited balance sheet in lieu of a reviewed financial statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1296 (July 2015), LR 42:

§133. Form A—Acquisition of Control or Merger with a Domestic Insurer

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

Name of Domestic Insurer

By

Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

(State of domicile of insurer being acquired)

Dated: _____, 20 _____

Name, Title, Address and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should Be Addressed:

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(a) State the name and address of the applicant seeking to acquire control over the insurer.

(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Provide a brief but informative description of the business intended to be done by the applicant and the applicant's subsidiaries.

(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than 1/2 of 1 percent of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10 percent or more of the voting securities of the applicant if the applicant is not an individual.

(a) Name and business address;

(b) Present principal business activity, occupation or employment, including position and office held, and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(c) Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.

(d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

(a) Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

(b) Explain the criteria used in determining the nature and amount of such consideration.

(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge or consolidate it with any person or persons, or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in such description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements of the acquiring party shall include the annual financial statements for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. In addition, the Commissioner may also request financial statements for any person identified in Item 2(c).

The annual financial statements of the applicant and the ultimate controlling person shall be accompanied by the certificate of an independent certified public accountant to the effect that such statements present fairly the financial position of the applicant and the ultimate controlling person and the results of their operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer who is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of such person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

Other than the applicant, an ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent certified public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent certified public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting materials relating thereto, any proposed employment, consultation, advisory, or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or §131.A and 131.C of Regulation 31.

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within 15 days after the end of the month in which the acquisition of control occurs.

ITEM 14. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of R.S. 22:691.4, _____ has caused this application to be duly signed on its behalf in the City/Parish of _____ and state of _____ on the _____ day of _____, 20_____.

(SEAL) _____

Name of Applicant

BY _____

(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that(s) he has duly executed the attached application dated , 20 _____, for and on behalf of _____ that (s)he is the _____ of such
(Name of Applicant) (Title of Officer)

company that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information, and belief.

(Signature) _____
(Type or print name beneath) _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.4 and 22:691.11

amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1299 (July 2015), LR 42:

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992),

§135. Form B—Annual Registration Statement

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the

State of _____

By

(Name of Registrant)

On Behalf of Following Insurance Companies

Name Address

Date: _____, 20 _____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should Be Addressed:

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date of which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than 1/2 of 1 percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding (insert amount). The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name
- (b) Home office address
- (c) Principal executive office address
- (d) The organizational structure of the person, (i.e., corporation, partnership, individual, trust, etc.)
- (e) The principal business of the person
- (f) The name and address of any person who holds or owns 10 percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
- (g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force; and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

- (1) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (2) purchases, sales, or exchanges of assets;
- (3) transactions not in the ordinary course of business;
- (4) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into the ordinary course of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;
- (5) all management agreements, service contracts, and all cost-sharing arrangements;
- (6) reinsurance agreements;
- (7) dividends and other distributions to shareholders;
- (8) consolidated tax allocation agreements; and
- (9) any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system.

Sales, purchases, exchanges, loan or extensions of credit, investments or guarantees involving the amounts specified in R.S. 22:691.6(D) or less of the Registrant's admitted assets as of the thirty-first day of December next preceding, or such transactions as set forth below, shall not be deemed material.

Sales, purchases, exchanges, loan or extensions of credit, investments or guarantees of less than \$25,000 shall not be deemed material even if such transaction would otherwise be deemed material under the provisions of R.S.22:691.6(D). Additionally, transactions that fall between \$25,000 and \$250,000 shall not be deemed material unless such transaction involves .0075 of the admitted assets of the insurer as of the thirty-first day of December next preceding.

The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to such transaction, and relationship of the affiliated parties to the Registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENT AND EXHIBITS

- (a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the holding company system as of the end of the person's latest fiscal year. Financial statements are required for an ultimate controlling person who is an individual as well as for a corporation or other type of business organization. If a holding company system includes more than one ultimate controlling person, annual financial statements are required for each ultimate controlling person.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent certified public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent certified public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent certified public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles. An ultimate controlling person (an individual) or persons (more than one individual) of a domestic insurer licensed and writing only in Louisiana may file an unaudited balance sheet in lieu of a reviewed financial statement.

- (c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or §131.A and §131.C.

ITEM 9. FORM C REQUIRED

A Form C, Number Summary of Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of R.S. 22:691.6, the Registrant has caused this annual registration statement to be duly signed on its behalf in the City/Parish of _____, and State of _____ on the _____ day of _____, 20_____.

(SEAL) _____
(Name of Registrant)

By (Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, 20 _____, for and on behalf of _____; that (s)he is the _____ of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and the facts therein set forth are true to the best of his/her knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.6 and 22:691.11

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1301 (July 2015).

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

Small Business Statement

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Public Comments

All interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than September 19, 2016 by close of

business or by 4:30 p.m., and should be addressed to Claire Lemoine, Louisiana Department of Insurance and may be mailed to P.O. Box 94214 Baton Rouge, LA 70804 or faxed to (225) 342-1632. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70804.

James J. Donelon
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 31—Holding Company**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in implementation costs or savings to state or local governmental units. Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 22:11, R.S. 22:691.11 and R.S. 22:691.27, the Department of Insurance (LDI) has amended Regulation 31. The purpose of the amendments is to assist the LDI in effectively regulating the National Association of Insurance Commissioner's (NAIC) model regulation regarding the Insurance Holding Company System Regulatory Law. The proposed rule change provides clarification of the definition of an Ultimate Controlling Person and provides for supplementary filings of unaudited annual financial statements for single state companies doing business in Louisiana under the current provisions of Regulation 31.

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

The proposed rule change will have no impact on state or local governmental revenues.

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

The proposed rule change provides supplementary filings for an ultimate controlling person of a domestic insurer licensed and writing only in Louisiana. This person may file an unaudited balance sheet in lieu of a reviewed financial statement. This may provide an economic benefit for not having the costs of obtaining a reviewed financial statement.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1608#054

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 40—Summary Document and Disclaimer and
Notice of Noncoverage (LAC 37:XIII.Chapter 9)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S.

49:950, et seq., hereby gives notice of its intent to amend Regulation 40 regarding summary document and disclaimer and notice of noncoverage.

The proposed regulation was necessitated by the passage of Acts 2009, No. 258 and Acts 2014, No. 374 of the Regular Session of the Louisiana Legislature, and is being amended to accomplish those purposes required by said acts as it pertains to coverage and limitations. The proposed amendments also makes technical changes and affect the following sections of the LAC 37:XIII §901, §903, §905, §907, and §909. Section 911 is an addition to the proposed regulation.

**Title 37
INSURANCE**

Part XIII. Regulations.

**Chapter 9. Regulation 40—Summary Document and
Disclaimer and Notice of Noncoverage**

§901. Purpose

A. The purpose of Regulation 40 is to implement the Louisiana Life and Health Insurance Guaranty Association Law as set forth in R.S. 22:2081, et seq., which is designed to protect covered persons against the risk of insurer insolvencies under certain life, health, or annuity policies or contracts.

B. The purpose of the documents, designated in §903 as exhibit A and exhibit B, is to give notice to the insurance-buying consumer that the Louisiana Life and Health Insurance Guaranty Association Law includes restrictions as to coverage, and in some instances excludes coverage for certain types of policies or contracts, and includes substantial limitations as to the amounts which may be reimbursed in the event of the insolvency of the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11, and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§903. Applicability and Scope

A. Regulation 40 applies to the Louisiana Life and Health Insurance Guaranty Association (LLHIGA) as created by R.S. 22:2085 and its member insurers as defined by R.S. 22:2084.

B. Exhibit A, which follows hereto and is made a part hereof, sets forth the form and content of the summary document, as approved by the commissioner of insurance, summarizes the coverage provided by the Louisiana Life and Health Insurance Guaranty Association Law, and includes a disclaimer statement which is to be placed conspicuously on the front of the summary document. Pursuant to R.S. 22:2098(B), the Summary Document with the Disclaimer is to be delivered with each life, health, or annuity policy or contract, described in R.S. 22:2083(B)(1), issued or delivered in Louisiana.

C. Exhibit B, which follows hereto and is made a part hereof, sets forth the notice of noncoverage required by R.S. 22:2098(D). It is required to be delivered with each life, health, or annuity policy or contract described in R.S. 22:2083(B)(1) and excluded from coverage under R.S. 22:2083(B)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11, and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§905. Form and Content

A. The summary document and disclaimer shall be in a form which complies with §907, exhibit A, which follows hereto and forms a part of Regulation 40.

B. The notice of noncoverage shall be in a form which complies with §909, exhibit B, which follows hereto and forms a part of Regulation 40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§907. Exhibit A—Summary of the Louisiana Life and Health Insurance Guaranty Association Act and Notice Concerning Coverage Limitations and Exclusions

A. Residents of Louisiana who purchase life insurance, annuities, or health insurance should know that the insurance companies licensed in this state to write these types of insurance are required by law to be members of LLHIGA. The purpose of LLHIGA is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this happens, LLHIGA will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state, and in some cases, to keep coverage in force. However, the valuable extra protection provided by these insurers through LLHIGA is limited. As noted in the disclaimer below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

B. Except as provided in R.S. 22:2098(D), when an insurer delivers a policy or contract described in R.S. 22:2083(B)(1), then prior to or at the time of delivery, the disclaimer notice described in R.S. 22:2098(C) and approved by the commissioner, shall be given separately to the policy or contract holder:

Disclaimer

The Louisiana Life and Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent. COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY. Even if coverage is provided, there are significant limits and exclusions. Coverage is generally conditioned upon residence in this state. Other conditions may also preclude coverage.

Insurance companies and insurance agents are prohibited by law from using the existence of the association or its coverage to sell you an insurance policy.

You should not rely on the availability of coverage under the Louisiana Life and Health Insurance Guaranty Association when selecting an insurer.

The Louisiana Life and Health Insurance Guaranty Association or the Department of Insurance will respond to any questions you may have which are not answered by this document.

LLHIGA
P.O. Drawer 44126
Baton Rouge, LA 70804

Department of Insurance
P. O. Box 94214
Baton Rouge, LA 70804-9214

C. The state law that provides for this safety-net coverage is called the Louisiana Life and Health Insurance Guaranty Association Law (the law), and is set forth at R.S. 22:2081 et seq. The following is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law; nor does it in any way change any person's rights or obligations under the law or the rights or obligations of LLHIGA.

D. Generally, individuals will be protected by the Life and Health Insurance Guaranty Association if they live in this state and hold a direct non-group life, health, or annuity policy or contract, a certificate under a direct group policy or contract for a supplemental contract to any of these, or an unallocated annuity contract, issued by an insurer authorized to conduct business in Louisiana. The beneficiaries, payees or assignees of insured persons may also be protected as well even if they live in another state unless they are afforded coverage by the guaranty association of another state, or other circumstances described under the law are applicable.

E. Exclusions from Coverage

1. A person who holds a direct non-group life, health, or annuity policy or contract, a certificate under a direct group policy or contract for a supplemental contract to any of these, or an unallocated annuity contract is not protected by LLHIGA if:

a. he is eligible for protection under the laws of another state (This may occur when the insolvent insurer was incorporated in another state whose Guaranty Association protects insureds who live outside that state.);

b. the insurer was not authorized to do business in this state;

c. his policy was issued by a profit or nonprofit hospital or medical service organization, an HMO, a fraternal benefit society, a mandatory state pooling plan, a mutual assessment company or similar plan in which the policyholder is subject to future assessments, an insurance exchange, an organization that issues charitable gift annuities as is defined in R.S. 22:952(A)(3), or any entity similar to any of these.

2. LLHIGA also does not provide coverage for:

a. any policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus;

b. any policy of reinsurance (unless an assumption certificate was issued);

c. interest rate or crediting rate yields, or similar factors employed in calculating changes in value, that exceed an average rate;

d. dividends, premium refunds, or similar fees or allowances described under the Law;

e. credits given in connection with the administration of a policy by a group contract holder;

f. employers', associations' or similar entities' plans to the extent they are self-funded (that is, not insured by an insurance company, even if an insurance company administers them) or uninsured;

g. unallocated annuity contracts (which give rights to group contract holders, not individuals), except unallocated annuity contracts and defined contribution

government plans qualified under Section 403(b) of the United States Internal Revenue Code (26 U.S.C. § 403(b)).

h. an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the policy owner or contract owner, including but not limited to, claims described under the Law;

i. a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to “Medicare Part C coverage” or “Medicare Part D coverage” and any regulations issued pursuant to those parts;

j. interest or other changes in value to be determined by the use of an index or other external references but which have not been credited to the policy or contract or as to which the policy or contract owner’s rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer, whichever is earlier.

F. Limits on Amounts of Coverage

1. The Louisiana Life and Health Insurance Guaranty Association Law also limits the amount that LLHIGA is obligated to pay out.

2. The benefits for which LLHIGA may become liable shall in no event exceed the lesser of the following:

a. LLHIGA cannot pay more than what the insurance company would owe under a policy or contract if it were not an impaired or an insolvent insurer.

b. For any one insured life, regardless of the number of policies or contracts there are with the same company, LLHIGA will pay a maximum of \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance.

c. For any one insured life, regardless of the number of policies or contracts there are with the same company, LLHIGA will pay a maximum of \$500,000 in health insurance benefits, and LLHIGA will pay a maximum of \$250,000 in present value of annuities, including net cash surrender and net cash withdrawal values.

3. In no event, regardless of the number of policies and contracts there were with the same company, and no matter how many different types of coverages, LLHIGA shall not be liable to expend more than \$500,000 in the aggregate with respect to any one individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§909. Exhibit B—Notice of Noncoverage

A. When an insurer or agent delivers a policy or contract described in R.S. 22:2083(B)(1) that is excluded from coverage by R.S. 22:2083(B)(2), then prior to or at the time of such delivery, the following notice shall be given separately to the policy or contract holder:

The policy or contract you are purchasing is not covered by the Louisiana Life and Health Insurance Guaranty Association.

Coverage is specifically excluded by law for the type of policy or contract you are purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:

§911. Severability

A. If any Section or provision of Regulation 40 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 40 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 40 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 11 and 2098.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

Public Comments

Interested persons may submit written comments on the proposed promulgation of Regulation 40. Such comments must be received no later than September 19, 2016 by close of business, 4:30 p.m., and addressed to Carol Fowler-Guidry, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 40—Summary Document and Disclaimer and Notice of Noncoverage

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed amended regulation will not result in implementation costs or savings to the state or local governmental units. The purpose of Regulation 40 is to implement the Louisiana Life and Health Insurance Guaranty Association Law (LLHIGA) as set forth in R.S. 22:2081, et seq., which is designed to protect covered persons against the risk of insurer insolvencies under certain life, health or annuity policies or contracts. The proposed amended regulation is necessitated by the passage of Act 258 of the 2009 Regular Session and Act 374 of the 2014 Regular Session of the Louisiana Legislature. The amendments pertain to technical changes and clarifies disclaimer and limitations of coverage with LLHIGA.

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

The proposed amended Regulation 40 will have no impact on state or local governmental revenues.

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

The proposed amended Regulation 40 will have no impact to directly affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amended Regulation 40 will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1608#052

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 78—Policy Form Filing Requirements (LAC 37:XIII.Chapter 101)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S.49:950 et seq., hereby gives notice of its intent to amend Regulation 78—Policy Form Filing Requirements.

The purpose of amending Regulation 78 is to provide a more streamlined and cost-effective means for insurance companies to file policy forms, amendments and associated documents with the Department of Insurance; to provide uniform procedures for filing among the states; and to bring this regulation into compliance with the Affordable Care Act.

Title 37
INSURANCE

Part XIII. Regulations

Chapter 101. Regulation 78—Policy Form Filing Requirements

§10101. Purpose

A. The purpose of this regulation is:

1. to provide for the uniform and practicable administration of the form filing, review and approval requirements of the Louisiana Insurance Code;

2. to clarify the provisions of R.S. 22:861(B).

3. to protect the interests of insurance consumers and the public through improvements to the form filing, review and approval processes; and

4. to assist all insurers doing business in the state of Louisiana in complying with the form filing, review and approval requirements of the *Louisiana Insurance Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S.22:861, R.S. 22:862 and R.S 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002), amended LR 33:101 (January 2007), LR 42:

§10103. Authority

A. This regulation is adopted pursuant to R.S 22:11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and Directive 169.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002), amended LR 42:

§10105. Applicability and Scope

A. This regulation applies to all insurers doing business in the state of Louisiana subject to the form filing, review and approval provisions of the *Louisiana Insurance Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002), amended LR 33:101 (January 2007), LR 42:

§10107. Filing and Review of Health Insurance Policy

Forms and Related Matters

A. Definitions. As used in this Section, the following terms shall have the meaning or definition as indicated herein.

Affirmative Approval—department approval, as a result of the department taking action, following compliance review of a complete filing, or a filing pursuant to Subsection D hereof.

Association—an organization legally formed for purposes other than the procurement of insurance and, depending upon the particular insurance products in question, meeting the requirements of R.S. 22:1000 A(1)(a)(iv), or R.S. 22:1061(5)(b), or R.S. 22:1184(4), whichever is applicable.

Benchmark Plan—a Basic Insurance Policy Form establishing the essential health benefits required of every plan sold in Louisiana under the Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by the Health Care and Education and Reconciliation Act of 2010 (Pub. L. 111-152), together referred to as the Affordable Care Act.

Basic Insurance Policy Form—an insurance contractual agreement delineating the terms, provisions and conditions of a particular insurance product. It includes certificates of coverage and any other evidence of coverage, subscriber

agreements, application forms where written application is required and is to be attached to the policy or be a part of the contract, and any life or health and accident rider or endorsement form. It does not include policies, riders, or endorsements designed, at the request of the individual policyholder, contract holder, or certificate holder, to delineate insurance coverage upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policy.

Certification of Compliance—certification by an insurer, executed by an officer or authorized representative of the insurer on a form prescribed by the department, that upon knowledge and belief a filing is complete and in compliance with all applicable statutes, and rules and regulations promulgated by the department. A certification of compliance must be included with any filing for certified approval.

Certified Approval—approval on the basis of an expedited review by the department of a complete filing based upon the inclusion of a statement of compliance and a certification of compliance, executed by an officer or authorized representative of the filing insurer on a form prescribed by the department. The department shall by directive determine those specific types of coverages and particular types of contracts for which the certified approval procedure is either required or available at the option of the insurer.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Complete Filing—the filing of a single insurance product, including any required filing fees; a basic insurance policy form, application form and supplemental application form, if any, to be attached to the policy or be a part of the contract; any life or health and accident rider or endorsement forms; all items required under Subsection C hereof, "General Filing Requirements," and any other requirements as may be set forth in the applicable statement of compliance.

Compliance Audit—a retrospective review conducted by the department of previously approved basic insurance policy forms to determine compliance with applicable law.

Compliance Review—department review of a filing made pursuant to this Section to determine either that the filing is in compliance with all applicable statutes, rules and regulations, or that the filing should be disapproved for noncompliance.

Deemed Approval—approval of a complete filing based upon notice, as provided herein, made to the department by the filing insurer, following expiration of the specific time periods as provided herein, where affirmative approval has not been granted and the filing has not been disapproved by the department.

Department—the Louisiana Department of Insurance.

Endorsement—a written agreement attached to an insurance product to add or subtract coverage, or otherwise modify the product.

Insurance Product—a basic insurance policy form delineating the terms, provisions and conditions of a specific type of coverage under a particular type of contract.

Insurer—every person engaged in the business of making contracts of insurance, as further defined in R.S. 22:46(10). As used in this Section, insurer shall also include

fraternal benefit societies and health maintenance organizations.

Method of Marketing—marketing either through independent or captive agents; telephone, electronic mail or direct mail solicitation; groups, organizations, associations or trusts; and/or the Internet.

Optional Endorsement or Rider – a form used to permit policyholders, certificate holders, or enrollees to obtain supplemental benefits.

Required Filing Fee—the fee assessed per product or filing pursuant to state insurance law.

Rider—an endorsement to an insurance product that modifies clauses and provisions of the product, including adding or excluding coverage.

Statement of Compliance—a form prescribed by the department, detailing the requirements specific to a particular form of coverage and contract type.

Trust—a fund established by an employer, two or more employers in the same industry, one or more labor unions, an association, multiple associations, or to a multiple employer trust established by an insurer on behalf of participating employers, pursuant to a trust instrument which transfers title to property and/or funds to one or more trustees to be administered as fiduciaries for the benefit of others, pursuant to R.S.22:1000. All participating employers and employees must have the same statutory protections that would apply if such policy was purchased by the employer directly from the insurer.

B. Filing Required

1. Pursuant to R.S.22:861 A, no basic insurance policy form, other than fidelity or surety bond forms, or application form where written application is required and is to be attached to the policy or be a part of the contract, or printed rider or endorsement form, shall be issued, delivered, or used in this state unless and until it has been filed with and approved by the commissioner. This requirement also applies to any group health or accident insurance policy covering residents of Louisiana, regardless of where issued or delivered. Every page of each such form including rider and endorsement forms filed with the department must be identified by a form number in the lower left corner of the page.

2. A filing description must accompany every filing, describing the items included in the filing, the insurance product type for which the filing is being made, and the method of marketing to be used for the product. For non-electronic paper filings, this description must be satisfied by the submission of a completed transmittal document.

C. General Filing Requirements

1. The department shall designate, by directive, those insurance products which must be filed pursuant to the requirements for certified approval as set forth in Subsection F hereof, "Time Periods and Requirements for Certified Approval of Policy Form Filings." A directive issued pursuant to this Subsection may also designate those insurance products which may, at the discretion of the insurer, be filed either pursuant to said requirements for certified approval, or as ordinary filings subject to review as set forth in Subsection E hereof. All insurance products not so designated shall be filed pursuant to the requirements for compliance review as set forth in Subsection E hereof,

"Time Periods and Requirements for Compliance Review of Basic Insurance Policy Forms."

2. Other than as specified in Subsection D hereof, "Exceptions," only complete filings will be accepted, whether by mail or as otherwise authorized. In order for the department to conduct a proper compliance review or compliance audit of an insurance product, all items associated therewith must be included. A filing will be determined incomplete and will be disapproved if it does not contain all applicable items.

a. All filings of an insurance product must include, in final wording, the following items:

- i. required filing fee, per insurance product, per insurance company;
- ii. Statement of Compliance for said product;
- iii. policy forms filed for approval;
- iv. application form;
- v. rider or endorsement forms;
- vi. copies of any sample identification card intended for issue to covered persons;
- vii. initial premium rates, classification of risks, and actuarial memoranda; and
- viii. self-addressed, stamped envelope of sufficient size for use in returning the company's set of the policy forms filed, unless filed electronically.

b. Filings of policy forms for one or more standardized Medicare Supplement insurance plans, or one or more standardized Medicare Select insurance plans, shall be considered a filing of one insurance product per insurer. Such filings must include, in final wording, the following items:

- i. required filing fee, per insurance product, per insurance company;
- ii. required filing fee for premium rates, rating schedule and supporting documentation; and required filing fee for advertisements;
- iii. Statement of Compliance for said product;
- iv. policy forms filed for approval;
- v. outline of coverage;
- vi. application form;
- vii. replacement notice;
- viii. rider or endorsement forms;
- ix. proposed plan of operation, as set forth in Regulation 33, Section 525.E for Medicare Select insurance plans;
- x. premium rates, rating schedule, and supporting documentation;
- xi. any new related advertising as defined in Rule 3A, Section 105, including any required filing fee for said advertising.

c. Filings of policy forms for Long-Term Care insurance must include, in final wording, the following items:

- i. required filing fee, per insurance product, per insurance company;
- ii. Statement of Compliance for said product;
- iii. policy forms filed for approval;
- iv. outline of coverage;
- v. application form;
- vi. replacement notice;
- vii. rider or endorsement forms;

- viii. premium rates and classification of risks;
- ix. personal worksheet, as per Regulation 46, Appendix B;
- x. disclosure, as per Regulation 46, Appendix C;
- xi. suitability letter, as per Regulation 46, Appendix D;
- xii. any new related advertising as defined in Rule 3, Section 1305; and
- xiii. if not filed electronically, a stamped, self-addressed envelope of sufficient size for use in returning the company's set of the policy forms filed.

d. Filings of all group insurance products must include the group master contract, individual certificates or subscriber agreements or other statements of coverage, group application, individual enrollment forms, and any conversion insurance policy and application for conversion, if offered under the group master contract.

e. Filings of group health and accident products intended for issuance to an association are limited to associations as defined herein and must include the association's constitution, by-laws, membership application, membership agreement and brochure of membership benefits other than the insurance products offered.

f. Filings of group health and accident products intended for issuance to a trust are limited to trusts established by one or more employers, trusts established by one or more labor unions, a trust established by an association, a multiple association trust established by an insurer on behalf of participating associations, or a multiple employer trust established by an insurer on behalf of participating employers, and must include the trust agreement, articles of incorporation or other instrument creating the trust, and member adoption agreement. If the trust was established by an association or a multiple association trust, the filing must include the information described in Subparagraph C.2.e hereof.

g. When a new Benchmark Plan is selected for implementation in Louisiana pursuant to applicable federal regulations, a complete product filing is required of each health insurance issuer that offers health insurance plans that are required to provide the essential health benefits categories.

h. Any insurer choosing to include variable material or information in any policy form must attempt to set forth the range of variable material or information in the policy form itself. Each section of a policy form that is variable must be identified as variable and shall be enclosed in square brackets. Whether the variable material or information be varying language, text, data, and/or ranges of values, the variable portion of the form filing must contain or describe in detail all the variations of material or information that could be placed in an insurance plan or policy form. The variable material or information must be described as clearly as possible and include all possible specific alternatives.

i. If it is necessary to provide an explanation of or additional information regarding the range of variability contained in the form, then a separate Statement of Variability that complies with the following regarding form, content and submission must be submitted. The Statement of Variability must provide an explanation of all permissible variations of material or information that could be used in an insurance plan or policy form offered to policyholders or

enrollees that is derived from the product filing. Whether the variable material or information be varying language, text, data, and/or ranges of values, the Statement of Variability must contain or describe in detail all the variations of material or information that could be placed in an insurance plan or policy form. The variable material or information must be described as clearly as possible and include all possible specific alternatives.

j. Use of any material or information that does not reflect the variable material or information bracketed in the policy form and/or described in the Statement of Variability constitutes use of an unapproved policy form.

k. After approval of a policy form containing variable material or information, an insurer may not submit an "informational filing" changing its variable material or information or the Statement of Variability as this constitutes changing a form without approval. Because the variable material or information and/or Statement of Variability alters the contents of the policy forms, changes to a Statement of Variability must be submitted as an amendatory filing and reviewed.

l. Any insurer that uses variable material or information in its policy form and/or that uses a Statement of Variability must ensure the following:

i. The final form issued to the consumer will not contain variable material or information in brackets.

ii. Any variable material or information included in the policy forms or in the Statement of Variability will be effective only for policy forms issued or amended after the approval of such variable material or information.

iii. The use of variable material or information will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination.

iv. Only material or information included in the policy form or explained in the Statement of Variability will be allowed to be used on the referenced forms received by consumers.

v. Any changes to variable material or information in the product form filing must be submitted for approval prior to implementation.

D. Exceptions. Exceptions to the requirements for a complete filing may be allowed at the discretion of the department, subject to the conditions stated herein, for the following policy forms.

1. Application forms or enrollment forms to be used with a particular insurance product, or with multiple insurance products, provided that the policy form filings and dates approved are identified for each previously approved product with which the application form or enrollment form will henceforth be used, and the application form or enrollment form is included with any subsequently filed basic insurance policy forms as needed to constitute a complete filing. No filing fees will be required for these filings.

2. Identification Cards. No filing fees will be required for these filings.

3. Medicare Supplement Advertising. Such filings must include statutory filing fees.

4. Long-Term Care Advertising. No filing fees will be required for these filings.

5. Filings of amendatory riders, endorsements, or optional endorsements or riders are permitted where the

insurance product to be altered was originally certified or granted affirmative approval in SERFF.

a. Such filings must include:

i. specimen copies of the pertinent previously approved or certified forms with the specific terms and provisions being amended, underlined in red or similarly emphasized;

ii. the state tracking number assigned by the department and/or the SERFF tracking number for each of the previously approved or certified forms;

iii. the date of approval of each previously approved or certified forms;

iv. the form number for each previously approved policy form to which the amendatory filing applies;

v. a Statement of Variability if the previously approved or certified forms contains variable material or information. The Statement of Variability shall include a clear description of the parameters or values of any variable material or information as required herein at Subparagraph C.2.h.

b. Such filings must also include an affidavit, on a form prescribed by the department, affirming that the insurance product, if amended by rider or endorsement as requested, will be fully compliant with all pertinent statutes and regulations. Premium rates, classification of risks, and actuarial memoranda are not required with such filings.

c. Such filings must include statutory filing fees in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

6. Filings of amendatory riders, endorsements, or optional endorsements or riders, as needed to bring into compliance with law any existing insurance products that have been previously certified or granted affirmative approval and are currently in force but are no longer being marketed, must include specimen copies of the previously approved or certified forms, the state tracking number assigned by the department and/or the SERFF tracking number for each of the previously approved or certified forms, the dates previously approved or certified, and the specific terms and provisions being amended, underlined in red or similarly emphasized. Premium rates, classification of risks, and actuarial memoranda are not required with such filings. The filing description shall advise that the previously approved or certified form is no longer being marketed. Such filings must include statutory filing fees for standardized plans in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

7. Medicare Supplement Rate Filings. Such filings must clearly indicate the percentage of increase in rates for each standardized plan and existing pre-standardized plan. Such filings must include statutory filing fees for standardized plans in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

8. Exclusionary riders pursuant to R.S. 22:1072.C; provided that the policy form filings, the state tracking numbers assigned by the department and/or the SERFF tracking numbers and dates approved are identified for each previously approved product with which the exclusionary rider form will henceforth be used. No filing fees will be required for these filings. The exclusionary rider form shall

be included with any subsequently filed basic insurance policy forms as needed to constitute a complete filing.

9. Assumption certificates, which must be filed with a copy of the assumption agreement, letter of domiciliary state approval, information fully identifying the block of business being assumed, the number of covered lives residing in the state of Louisiana to be affected by the assumption, and the effective date of the assumption. No filing fees will be required for these filings.

10. Following approval of a complete filing of a Medicare Supplement insurance product, subsequent filings by the same insurer of standardized plans of insurance of the same type do not require inclusion of associated forms such as the replacement notice or plan of operation, unless changes have been made or the plan of operation has changed. No filing fees will be required for any of the above associated forms. However, subsequent filings of an outline of coverage will require a filing fee in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

11. Following approval of a complete filing of a long-term care insurance product, subsequent filings by the same insurer of other long-term care products do not require inclusion of associated forms such as the replacement notice, personal worksheet, disclosure notice and suitability letter, unless changes have been made. No filing fees will be required for any of the above associated forms. However, subsequent filings of an outline of coverage will require a filing fee in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

12. Forms for lines of insurance or insurance products specifically exempted pursuant to statute.

13. Filings of riders or endorsements as needed to evidence that the requirements contained in Title 22 of the Louisiana Revised Statutes are covered for Louisiana residents that are enrolled in a group plan offered by a policyholder located outside of Louisiana who has obtained such group coverage from a health and accident insurer subject to the jurisdiction of another State. Such filings must include specimen copies of the complete product forms, including any amendments, that are approved or certified for use by the other State, document(s) that evidence approval or certification of the complete product forms by the other State, and the date(s) of the other State's approval or certification. The specimen copies of the complete product forms shall include premium rates, classification of risks, and actuarial memoranda. Such filings must include required filing fees for policy forms or subscriber agreements in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

E. Time Periods and Requirements for Compliance Review of Basic Insurance Policy Forms

1. The time periods stated in this Section do not begin until the date a complete filing, or a filing pursuant to Subsection D hereof, "Exceptions," is received by the department.

2. If a filing is incomplete, notice of disapproval in accordance with R.S. 22:862(6) will be issued for failure to comply with the requirements of this regulation.

3. A basic insurance policy form must be submitted to the department in accordance with the "General Filing

Requirements" of this Section no less than 60 days in advance of planned issuance, delivery or use.

4. If affirmatively approved by order of the commissioner prior to expiration of the 60-day period allowed for department review of a filing, the policy forms filed may be used on or after the date approved.

5. If disapproved, the policy forms filed may not be used.

6. At the expiration of 60 days, if no order has been issued affirmatively approving or disapproving a filing, the insurer shall submit written notice to the department if the filing has been deemed approved on a specific date, or advise when the filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 61, but not earlier than the 60-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 60-day period clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

7. The commissioner may send written notice prior to expiration of the initial 60-day period extending the time allowed for approval or disapproval by an additional 15 days.

a. If affirmatively approved by order of the commissioner prior to expiration of the 15-day extended period allowed for department review, the policy forms filed may be used on or after the date approved.

b. At the expiration of the 15-day extended period, if no order has been issued affirmatively approving or disapproving the policy form filing, the insurer shall submit written notice to the department if the policy form filing has been deemed approved on a specific date, or advise when the policy form filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 61 referred to in Paragraph E.6 or day 76, but not earlier than the 60-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 15-day extended period, clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

F. Time Periods and Requirements for Certified Approval of Policy Form Filings

1. The department will make available Statements of Compliance setting forth the statutory and regulatory requirements specific to the various forms of coverage and contract types, as well as Certification of Compliance forms.

2. A policy form filing submitted for certified approval must include the following documents:

a. Statement of Compliance applicable to the form of coverage and contract type being submitted;

b. signed and dated Certification of Compliance;

c. all other items as set forth in Paragraph C.2 hereof.

3. If the filing is incomplete, notice of disapproval in accordance with R.S. 22:862(6) will be issued for failure to comply with the requirements of this regulation.

4. At the expiration of 15 days from acknowledged receipt of a filing by the department, if no order has been issued affirming certified approval or disapproving the policy form filing, the insurer shall submit written notice to the department if the policy form filing has been deemed approved on a specific date, or advise when the policy form filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 16, but not earlier than the 15-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 15-day period clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

5. No insurer, through an officer or authorized representative, shall file a certification of compliance containing false attestations, or from which material facts or information have been omitted. In the event that the department subsequently learns that a certification of compliance contains any inaccuracies, false attestations, or material omissions, approval of the subject forms may be withdrawn, and the insurer may be subjected to the provisions of Subsection I hereof.

G. Resubmission of Filings

1. When submitting revised forms in response to an order of disapproval, or withdrawal of approval, whether issued pursuant to Subsection E, Subsection F or Subsection I hereof, the revised forms will constitute a new filing, must comply with all provisions of this Section for such a filing, and, in addition to the required filing fee, must include:

a. an outline of the proposed revisions, referencing the specific sections and page numbers for each form being revised;

b. a restatement of the form with all necessary revisions, as set forth in the prior order of disapproval, underlined in red or similarly emphasized; and

c. a copy of the prior order of disapproval, or withdrawal of approval, issued by the commissioner on the previous filing.

2. When submitting revisions to previously approved forms, the revised forms will constitute a new filing, must be a complete filing as set forth in Subsection C hereof, "General Filing Requirements" and, in addition to the required filing fee, must include:

a. a copy of the previously approved form;

b. an outline of the proposed revisions, referencing the specific sections and page numbers for each previously approved form being revised;

c. a restatement of the form, with all proposed revisions underlined in red or similarly emphasized; and

d. a copy of the prior order of approval, issued by the commissioner on the previous filing.

3. When a previously approved form has been rewritten, it must be assigned a unique form number, and such form must be filed as an original filing.

H. Compliance and Audits

1. Approval of a basic insurance policy form does not assure perpetual compliance. Following subsequent changes in applicable law, insurers shall revise and file updated insurance products, or amendatory riders or endorsements

where appropriate, with the department for approval as required to maintain continuous compliance with the current requirements of law. This provision shall apply to all new business issued, or in-force business renewed, following any such subsequent changes in applicable law, or as otherwise expressed by the Louisiana Legislature.

2. A retrospective review process is utilized to verify compliance of approved filings and to assure that all approved filings remain in compliance with currently applicable law. Compliance audits may be conducted by random selection, prompted by complaints filed with the department or requests for information made by the department, or performed during the course of examinations conducted by the department.

3. Insurers shall notify the department in writing to advise when a previously approved basic insurance policy form will no longer be marketed in this state and is being permanently withdrawn from the market. Such notification shall also advise whether or not coverage issued in this state under the policy form remains in force and whether or not such existing business will continue to be renewed. The notification shall provide the policy form numbers being discontinued and dates originally approved by the department.

I. Withdrawal of Approval and Corrective Action

1. The department shall withdraw any affirmative approval of a filing previously granted, or withdraw any approval of a filing previously deemed approved by an insurer, if the department determines that any of the reasons for disapproval as stated in R.S. 22:862 apply to the filing in question. The notice of withdrawal of approval by the department shall state that such withdrawal of approval is effective 30 days after receipt of such notice by the affected insurer or immediately where there has been a violation of the Louisiana Insurance Code that results in irreparable injury, loss, or damage and injunctive relief is necessary. In the event injunctive relief is granted to the department, the insurer or its duly authorized representative shall be enjoined or restrained from engaging in any prohibitory activity set forth in the injunctive order or judgment rendered by a court of competent jurisdiction.

a. Prior to withdrawing approval of a filing previously granted, the department will notify the affected insurer in writing of the alleged violation or irregularity. That insurer will then have 15 days to show that the disputed forms are in compliance with the Louisiana Insurance Code. If the affected insurer is unable to show compliance, the department will then proceed with issuing the notice of withdrawal of approval.

b. The affected insurer may request a hearing on the withdrawal of approval, in accordance with the provisions of Section J of this Chapter. The request for hearing must be made to the Division of Administrative Law and to the Department of Insurance, pursuant to R.S. 22:2191.

c. Upon receipt by the department of a timely request for a hearing, the 30-day notice period precedent to withdrawal of approval being effective shall be suspended for the duration of the hearing process, and shall recommence upon the date of a ruling adverse to the insurer requesting the hearing, unless injunctive relief has been requested and granted to the department by a court of

competent jurisdiction. Such suspension of the notice of withdrawal of approval shall be applicable to Paragraphs 1.2, 3, 4 and 5 hereof.

2. Upon receipt of the notice of withdrawal of approval by the department, the affected insurer must:

a. immediately amend its procedures to assure that all in-force business is properly administered in accordance with the findings stated in the department's withdrawal of approval;

b. immediately review and ascertain any negative impact upon covered persons caused directly or indirectly by non-compliant provisions of the forms for which department approval has been withdrawn; and

c. immediately review other products being marketed by the insurer to assure that they do not contain such non-compliant provisions.

3. Within 30 days of receipt of the notice of withdrawal of approval by the department, a corrective action plan must be submitted to the department by the affected insurer. The corrective action plan must include the following.

a. If the affected product will no longer be marketed, amendatory endorsement forms or rider forms to affect any in-force business written utilizing the non-compliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.

b. If the insurer desires to continue marketing the affected product, both:

i. a complete filing of properly revised forms in accordance with Paragraph G.1 hereof; and

ii. amendatory endorsement forms or rider forms to affect any in-force business written utilizing the non-compliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.

c. Where such a required change can be clearly explained to prospective policyholders through amendatory endorsement forms or rider forms, such approval shall not extend to any reprinting of such forms.

4. Thirty days following receipt of the notice by the affected insurer, of withdrawal of approval by the department, an affected product shall not be issued by the insurer, except in accordance with a corrective action plan approved by the department. The insurer has the obligation to timely notify its marketing force, or to otherwise adjust its business operations, accordingly. In the event the affected insurer issues the product without approval from the department, and injunctive relief is necessary and granted to the department, the insurer or its duly authorized representative shall be enjoined or restrained from engaging in any prohibitory activity set forth in the injunctive order or judgment rendered by a court of competent jurisdiction.

5. The department may, in its discretion, extend the 30-day period for approval of a corrective action plan, upon the written request of the affected insurer and for good cause shown. In the event such an extension is granted, the date by

which the insurer must cease issuing the affected product, except in accordance with a corrective action plan approved by the department, shall likewise be so extended.

6. Failure to timely respond as required herein shall result in a formal investigation to establish the extent of statutory violations, followed by an administrative hearing to determine appropriate sanctions against the insurer.

7. Where the department fails to respond to a corrective action plan filed by an insurer, or takes no action whatsoever regarding such plan, the insurer may deem the subject corrective action plan approved at the expiration of the 30-day period for approval by the department.

J. Appeals and Hearings

1. Any person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Part XXIX of Title 22 of the Louisiana Revised Statutes. Pursuant to R.S. 22:2191, such demand must be in writing, must specify in what respects such person is aggrieved and the grounds to be relied upon as the basis for relief to be demanded at the hearing, and must be made within 30 days after the failure to approve any filing, notice of disapproval of any filing, or the notice of withdrawal of approval of any filing when such notice is mailed, faxed or delivered to the aggrieved party at his last known address.

K. Maintenance of Records; Alteration of Forms Prohibited

1. Every person filing policy forms, or related forms, for approval by the department shall maintain the original set of any and all forms as returned by the department, along with all related correspondence and transmittal documents from the department. Alternatively, images of such documents may be maintained in electronic/digital form. Such files shall be available for inspection by the department upon request, and must be maintained for a period of five years after the forms have been withdrawn from the market in accordance with Paragraph H.3 hereof and no coverage issued on risks in this state utilizing such forms remains in force.

2. The alteration of, or any change to, any such form approved by the department is prohibited. Any such altered or changed form shall be submitted to the department as a new filing, and shall comply with all provisions of this Section applicable to a new filing. This Subsection shall not apply to typographical corrections and format improvements that do not affect the terms, provisions or clarity of the product.

3. A change of company name or logo, a change of address, and changes in listed officers do not require a new filing of forms when the department is otherwise properly notified of such change, and a copy of such notification is maintained on file by the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002), amended LR 33:101 (January 2007), LR 42:

§10109. Filing and Review of Life and Annuity Insurance Policy Forms and Related Matters

A. Definitions. As used in this Section, the following terms shall have the meaning or definition as indicated herein.

Affirmative Approval—department approval, as a result of the department taking action, following compliance review of a complete filing, or a filing pursuant to Subsection D hereof.

Amendatory Endorsement—a written agreement attached to or stamped on an insurance product to add or subtract coverage, or otherwise modify the product.

Amendatory Rider—a written document that is attached to an insurance product that adds to or changes information in the original document.

Association—an organization which has been formed for purposes other than procuring insurance for the members or employees.

Basic Insurance Policy Form—an insurance contractual agreement delineating the terms, provisions and conditions of a particular insurance or annuity product. It includes certificates of coverage, application forms where written application is required and is to be attached to the policy or be a part of the contract, and any life or health and accident rider or endorsement form. It does not include policies, riders, or endorsements designed, at the request of the individual policyholder, contract holder, or certificate holder, to delineate insurance coverage upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policy.

Certification of Compliance—certification by an insurer, executed by an officer or authorized representative of the insurer on a form prescribed by the department, that upon knowledge and belief a filing is complete and in compliance with all applicable statutes, and rules and regulations promulgated by the department. A certification of compliance must be included with any filing for certified approval.

Certified Approval—approval on the basis of an expedited review by the department of a complete filing based upon the inclusion of a statement of compliance and a certification of compliance, executed by an officer or authorized representative of the filing insurer on forms prescribed by the department. The department shall by directive determine those specific types of coverage and particular types of contracts for which the certified approval procedure is either required or available at the option of the insurer.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Complete Filing—the filing of a single insurance product, including any required filing fees; a basic insurance policy form, application form and supplemental application form, if any, to be attached to the policy or be a part of the contract; any life or health and accident rider or endorsement forms; all items required under Subsection C hereof, "General Filing Requirements," and any other requirements as may be set forth in the applicable statement of compliance.

Compliance Audit—a retrospective review conducted by the department of previously approved basic insurance policy forms to determine compliance with applicable law.

Compliance Review—department review of a filing made pursuant to this Section to determine either that the filing is in compliance with all applicable statutes, rules and regulations, or that the filing should be disapproved for noncompliance.

Deemed Approval—approval of a complete filing based upon notice, as provided herein, made to the department by the filing insurer, following expiration of the specific time periods as provided herein, where affirmative approval has not been granted and the filing has not been disapproved by the department.

Department—the Louisiana Department of Insurance.

Endorsement—a written agreement attached to an insurance product to add or subtract coverage, or otherwise modify the product.

Insurance Product—a basic insurance policy form delineating the terms, provisions and conditions of a specific type of coverage under a particular type of contract.

Insurer—every person engaged in the business of making contracts of insurance, as further defined in R.S. 22:46(10). As used in this Section, insurer shall also include fraternal benefit societies.

Method of Marketing—marketing either through independent or captive agents; telephone, electronic mail or direct mail solicitation; groups, organizations, associations or trusts; and/or the Internet.

Optional Endorsement or Rider – a form used to permits policyholders, certificate holders, or enrollees to obtain supplemental benefits.

Required Filing Fee—the fee assessed per product or filing pursuant to R.S. 22:821(11)(a).

Rider—an endorsement to an insurance product that modifies clauses and provisions of the product, including adding or excluding coverage.

Statement of Compliance—a form prescribed by the department detailing the requirements specific to a particular form of coverage and contract type.

Trust—a fund established by an insurer on behalf of participating employers, provided all participating employers and employees have the same statutory protections that would apply if such policy were purchased by the employer directly from the insurer, pursuant to R.S. 22:941(A)(1).

B. Filing Required

1. Pursuant to R.S. 22:861.A, no basic insurance policy form, other than fidelity or surety bond forms, or application form where written application is required and is to be attached to the policy or be a part of the contract, or printed rider or endorsement form, shall be issued, delivered, or used in this state unless and until it has been filed with and approved by the commissioner. This requirement applies to any group life insurance policy or annuity covering residents of Louisiana where issued or delivered in Louisiana. Every page of each such form including rider and endorsement forms filed with the department must be identified by a form number in the lower left corner of the page.

2. A filing description must accompany every filing, describing the items included in the filing, the insurance or

annuity product for which the filing is being made, and the method of marketing to be used for the product. For non-electronic paper filings, this description must be satisfied by the submission of a completed Life and Annuity Transmittal document. If the filing includes health insurance to be offered as an optional benefit under the base life insurance contract, the appropriate statement of compliance for said health insurance product must be completed and submitted.

C. General Filing Requirements

1. The department shall designate, by directive, those insurance or annuity products which must be filed pursuant to the requirements for certified approval as set forth in Subsection F hereof, "Time Periods and Requirements for Certified Approval of Policy Form Filings." A directive issued pursuant to this Subsection may also designate those insurance or annuity products which may, at the discretion of the insurer, be filed either pursuant to said requirements for certified approval, or as ordinary filings subject to review as set forth in Subsection E hereof. All insurance or annuity products not so designated shall be filed pursuant to the requirements for compliance review as set forth in Subsection E hereof, "Time Periods and Requirements for Compliance Review of Basic Insurance Policy Forms."

2. Other than as specified in Subsection D hereof, "Exceptions," only complete filings will be accepted, whether by mail or as otherwise authorized. In order for the department to conduct a proper compliance review or compliance audit of an insurance or annuity product, all items associated therewith must be included. A filing will be determined incomplete and will be disapproved if it does not contain all applicable items.

a. All filings of individual life insurance or annuity products must include, in final wording, the following items:

- i. required filing fee, per insurance or annuity product, per company;
- ii. Statement of Compliance for said product;
- iii. policy forms filed for approval;
- iv. application form;
- v. rider or endorsement forms;
- vi. actuarial memorandum describing the statutory reserves and non-forfeiture values that will be used for each plan of insurance; and
- vii. life illustrations, if illustrated.
- viii. self-addressed, stamped envelope of sufficient size for use in returning the company's set of policy forms filed, unless filed electronically.

b. Filings of all group life and annuity products must include, in final wording, the following:

- i. required filing fee, per insurance or annuity product, per insurance company;
- ii. Statement of Compliance for said product;
- iii. group master contract;
- iv. individual certificate;
- v. group application;
- vi. rider or endorsement forms;
- vii. employee/member enrollment forms; and
- viii. an actuarial memorandum describing the statutory reserves and non-forfeiture values that will be used for each plan of insurance.
- ix. self-addressed, stamped envelope of sufficient size for use in returning the company's set of policy forms filed, unless filed electronically.

c. Filings of group life and annuity products intended for issuance to an association are limited to associations as defined herein, and must include the association's constitution, by-laws, membership application, membership agreement and brochure of membership benefits other than the insurance products offered.

d. Filings of group life and annuity products intended for issuance to a trust are limited to trusts established by an insurer on behalf of a participating employer or association and must include the trust agreement, articles of incorporation or other instrument creating the trust, and member adoption agreement. If the trust was established by an association, the filing must include the information described in Subparagraph C.2.c hereof. This Subsection shall not apply to trusts established by qualified or government pension plans.

e. Any insurer choosing to include variable material or information in any policy form must attempt to set forth the range of variable material or information in the policy form itself. Each section of a policy form that is variable must be identified as variable and should be enclosed in square brackets. Whether the variable material or information be varying language, text, data, and/or ranges of values, the variable portion of the form filing must contain or describe in detail all the variations of material or information that could be placed in an insurance plan or policy form. The variable material or information must be described as clearly as possible and include all specific alternatives where possible.

f. If it is necessary to provide an explanation of or additional information regarding the range of variability contained in the form, then a separate Statement of Variability that complies with the following regarding form, content and submission must be submitted. The Statement of Variability must provide an explanation of all permissible variations of material or information that could be used in an insurance plan or policy form offered to policyholders or enrollees that is derived from the product filing. Whether the variable material or information be varying language, text, data, and/or ranges of values, the Statement of Variability must contain or describe in detail all the variations of material or information that could be placed in an insurance plan or policy form. The variable material or information must be described as clearly as possible and include all specific alternatives where possible.

g. Use of any material or information that does not reflect the variable material or information bracketed in the policy form and/or described in the Statement of Variability constitutes use of an unapproved policy form.

h. After approval of a policy form containing variable material or information, an insurer may not submit an "informational filing" changing its variable material or information or the Statement of Variability as this constitutes changing a form without approval. Because the variable material or information and/or Statement of Variability alters the contents of the policy forms, changes to a Statement of Variability must be submitted as an amendatory filing and reviewed.

i. Any insurer that uses variable material or information in its policy form and/or that uses a Statement of Variability must ensure the following:

i. The final form issued to the consumer will not contain variable material or information in brackets.

ii. Any variable material or information included in the policy forms or in the Statement of Variability will be effective only for policy forms issued or amended after the approval of such variable material or information.

iii. The use of variable material or information will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination.

iv. Only material or information included in the policy form or explained in the Statement of Variability will be allowed to be used on the referenced forms received by consumers.

v. Any changes to variable material or information in the product form filing will be submitted for approval prior to implementation.

D. Exceptions. Exceptions to the requirements for a complete filing may be allowed at the discretion of the department, subject to the conditions stated herein, for the following policy forms.

1. Application forms or enrollment forms to be used with a particular insurance or annuity product, or with multiple insurance or annuity products, provided that the policy form filings and dates approved are identified for each previously approved product with which the application form or enrollment form will henceforth be used and, the application form or enrollment form is included with any subsequently filed basic insurance or annuity policy forms as needed to constitute a complete filing. No filings fees will be required for these filings.

2. Assumption certificates, which must be filed in duplicate, with a single copy of the assumption agreement, letter of domiciliary state approval, information fully identifying the block of business being assumed, the number of covered lives residing in the state of Louisiana to be affected by the assumption, and the effective date of the assumption. No filing fees will be required for these filings.

3. Filings of riders, amendatory riders, endorsements, and revisions to schedule pages are permitted where the insurance product to be altered was originally certified or granted affirmative approval in SERFF.

a. Such filings must include:

i. specimen copies of the pertinent previously approved or certified forms with the specific terms and provisions being amended, underlined in red or similarly emphasized;

ii. the state tracking number assigned by the department and/or SERFF tracking number for each of the pertinent previously approved or certified forms;

iii. where necessary, a Statement of Variability, that shall include a clear description of the parameters or values of any variable material or information;

iv. the date of approval; and

v. the form number for each previously approved policy form for which the amendment applies.

b. Such filings must also include an affidavit, on a form prescribed by the department, affirming that the insurance product, if amended by rider or endorsement as requested, will be fully compliant with all pertinent statutes and regulations. Actuarial memorandums are not required with such filings.

c. Such filings must include statutory filing fees in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

4. Filings of amendatory riders or endorsements as needed to bring into compliance with law any existing insurance or annuity products that have been previously approved and are currently in force but are no longer being marketed.

a. Such filings must include:

i. specimen copies of the previously approved forms;

ii. the state tracking number assigned by the department and/or the SERFF tracking number for each of the pertinent previously approved or certified forms and the dates previously approved;

iii. the specific terms and provisions being amended, underlined in red or otherwise noted;

iv. where necessary, a Statement of Variability that shall include a clear description of the parameters or values of any variable material or information;

v. the filing description shall advise that the previously approved form is no longer being marketed; and;

vi. the filings must include statutory filing fees in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

5. Filings of optional rider forms or optional endorsement forms affecting previously approved or certified life insurance or annuity products must include:

a. the state tracking number assigned by the department and/or the SERFF tracking number for each previously approved or certified forms with which the rider forms or endorsement forms will be used;

b. where necessary, a Statement of Variability that shall include a clear description of the parameters or values of any variable material or information;

c. the statutory filing fees in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

6. Forms for lines of insurance or insurance products specifically exempted pursuant to statute.

E. Time Periods and Requirements for Compliance Review of Basic Insurance Policy Forms

1. The time periods stated in this Section do not begin until the date a complete filing, or a filing pursuant to Subsection D hereof, "Exceptions," is received by the department.

2. If a filing is incomplete, notice of disapproval in accordance with R.S. 22:862(6) will be issued for failure to comply with the requirements of this regulation.

3. A basic insurance policy form must be submitted to the department in accordance with the General Filing Requirements of this Section no less than 45 days in advance of planned issuance, delivery or use.

4. If affirmatively approved by order of the commissioner prior to expiration of the 45-day period allowed for department review of a filing, the policy forms filed may be used on or after the date approved.

5. If disapproved, the policy forms filed may not be used.

6. At the expiration of 45 days, if no order has been issued affirmatively approving or disapproving a filing, the insurer shall submit written notice to the department if the

filing has been deemed approved on a specific date, or advise when the filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 46, but no earlier than the 45-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 45-day period clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

7. The commissioner may send written notice prior to expiration of the initial 45-day period extending the time allowed for approval or disapproval by an additional 15 days.

a. If affirmatively approved by order of the commissioner prior to expiration of the 15-day extended period allowed for department review, the policy forms filed may be used on or after the date approved.

b. At the expiration of the 15-day extended period, if no order has been issued affirmatively approving or disapproving the policy form filing, the insurer shall submit written notice to the department if the policy form filing has been deemed approved on a specific date, or advise when the policy form filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 46 referred to in Paragraph E.6 or day 61 but no earlier than the 45-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 15-day extended period, clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

F. Time Periods and Requirements for Certified Approval of Policy Form Filings

1. The department will make available Statements of Compliance setting forth the statutory and regulatory requirements specific to the various forms of coverage and contract types, as well as Certification of Compliance forms.

2. A policy form filing submitted for certified approval must include the following documents:

a. Statement of Compliance applicable to the form of coverage and contract type being submitted;

b. signed and dated Certification of Compliance;

c. all other items as set forth in Paragraph C.2 hereof.

3. If the filing is incomplete, notice of disapproval in accordance with R.S. 22:862(6) will be issued for failure to comply with the requirements of this regulation.

4. At the expiration of 15 days from acknowledged receipt of a filing by the department, if no order has been issued affirming certified approval or disapproving the policy form filing, the insurer shall submit written notice to the department if the policy form filing has been deemed approved on a specific date, or advise when the policy form filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 16, but no earlier than the 15-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 15-day period clearly stating the date deemed approved

or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

5. No insurer, through an officer or authorized representative, shall file a certification of compliance containing false attestations, or from which material facts or information have been omitted. In the event that the department subsequently learns that a certification of compliance contains any inaccuracies, false attestations, or material omissions, approval of the subject forms may be withdrawn, and the insurer may be subjected to the provisions of Subsection I hereof.

G. Resubmission of Filings

1. When submitting revised forms in response to an order of disapproval, or withdrawal of approval, whether issued pursuant to Subsection E, Subsection F or Subsection I hereof, the revised forms will constitute a new filing, must be a complete filing as set forth in Subsection C hereof, "General Filing Requirements" and, in addition to the required filing fee, must include:

a. an outline of the proposed revisions, referencing the specific sections and page numbers for each form being revised;

b. a restatement of the form with all necessary revisions, as set forth in the prior order of disapproval, underlined in red or similarly emphasized; and

c. a copy of the prior order of disapproval, or withdrawal of approval, issued by the commissioner on the previous filing.

2. When submitting revisions to previously approved forms, the revised forms will constitute a new filing, must be a complete filing as set forth in Subsection C hereof, "General Filing Requirements" and, in addition to the required filing fee, must include:

a. a copy of the previously approved form;

b. an outline of the proposed revisions, referencing the specific sections and page numbers for each previously approved form being revised;

c. a restatement of the form, with all proposed revisions underlined in red or similarly emphasized; and

d. a copy of the prior order of approval, issued by the commissioner on the previous filing.

3. When a previously approved form has been rewritten, it must be assigned a unique form number, and such form must be filed as an original filing.

H. Compliance and Audits

1. Approval of a basic insurance policy form does not assure perpetual compliance. Following subsequent changes in applicable law, insurers shall revise and file updated insurance products, or amendatory riders or endorsements where appropriate, with the department for approval as required to maintain continuous compliance with the current requirements of law. This provision shall apply to all new business issued, or in-force business renewed, following any such subsequent changes in applicable law, or as otherwise expressed by the Louisiana Legislature.

2. A retrospective review process is utilized to verify compliance of approved filings and to assure that all approved filings remain in compliance with currently

applicable law. Compliance audits may be conducted by random selection, prompted by complaints filed with the department or requests for information made by the department, or performed during the course of examinations conducted by the department.

3. Insurers shall notify the department in writing to advise when a previously approved basic insurance policy form will no longer be marketed in this state and is being permanently withdrawn from the market. Such notification shall also advise whether or not coverage issued in this state under the policy form remains in force and whether or not such existing business will continue to be renewed. The notification shall provide the policy form numbers being discontinued and dates originally approved by this department.

I. Withdrawal of Approval and Corrective Action

1. The department shall withdraw any affirmative approval of a filing previously granted, or withdraw any approval of a filing previously deemed approved by an insurer, if the department determines that any of the reasons for disapproval as stated in R.S. 22:862 apply to the filing in question. The notice of withdrawal of approval by the department shall state that such withdrawal of approval is effective 30 days after receipt of such notice by the affected insurer or immediately where there has been a violation of the Louisiana Insurance Code that results in irreparable injury, loss, or damage and injunctive relief is necessary. In the event injunctive relief is granted to the department, the insurer or its duly authorized representative shall be enjoined or restrained from engaging in any prohibitory activity set forth in the injunctive order or judgment rendered by a court of competent jurisdiction.

a. The affected insurer may request a hearing on the withdrawal of approval, by written request mailed to the department within 30 days of receipt of the notice of withdrawal of approval.

b. Upon receipt by the department of a timely request for a hearing, the 30-day notice period precedent to withdrawal of approval being effective shall be suspended for the duration of the hearing process, and shall recommence upon the date of a ruling adverse to the insurer requesting the hearing, unless injunctive relief has been requested and granted to the department by a court of competent jurisdiction. Such suspension of the notice of withdrawal of approval shall be applicable to Paragraphs I.2, 3, 4 and 5 hereof.

2. Upon receipt of the notice of withdrawal of approval by the department, the affected insurer must:

a. immediately amend its procedures to assure that all in-force business is properly administered in accordance with the findings stated in the department's withdrawal of approval;

b. immediately review and ascertain any negative impact upon covered persons caused directly or indirectly by non-compliant provisions of the forms for which department approval has been withdrawn; and

c. immediately review other products being marketed by the insurer to assure that they do not contain such non-compliant provisions.

3. Within 30 days of receipt of the notice of withdrawal of approval by the department, a corrective

action plan must be submitted to the department by the affected insurer. The corrective action plan must include the following.

a. If the affected product will no longer be marketed, amendatory endorsement forms or rider forms to affect any in-force business written utilizing the non-compliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.

b. If the insurer desires to continue marketing the affected product, both:

i. a complete filing of properly revised forms in accordance with Paragraph G.1 hereof; and

ii. amendatory endorsement forms or rider forms to affect any in-force business written utilizing the non-compliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.

c. Where such a required change can be clearly explained to prospective policyholders through amendatory endorsement forms or rider forms, an insurer may request department approval to utilize its existing inventory of the policy forms in question subject to the incorporation of approved amendatory endorsement forms or rider forms. Such approval shall not extend to any reprinting of such forms.

4. Thirty days following receipt of the notice by the affected insurer, of withdrawal of approval by the department, an affected product shall not be issued by the insurer, except in accordance with a corrective action plan approved by the department. The insurer has the obligation to timely notify its marketing force, or to otherwise adjust its business operations, accordingly. In the event the affected insurer issues the product without approval from the department, and injunctive relief is necessary and granted to the department, the insurer or its duly authorized representative shall be enjoined or restrained from engaging in any prohibitory activity set forth in the injunctive order or judgment rendered by a court of competent jurisdiction.

5. The department may, in its discretion, extend the 30-day period for approval of a corrective action plan, upon the written request of the affected insurer and for good cause shown. In the event such an extension is granted, the date by which the insurer must cease issuing the affected product, except in accordance with a corrective action plan approved by the department, shall likewise be so extended.

6. Failure to timely respond as required herein shall result in a formal investigation to establish the extent of statutory violations, followed by an administrative hearing to determine appropriate sanctions against the insurer.

7. Where the department fails to respond to a corrective action plan filed by an insurer, or takes no action whatsoever regarding such plan, the insurer may deem the subject corrective action plan approved at the expiration of the 30-day period for approval by the department.

J. Appeals and Hearings

1. Any person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of

approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Part XXIX of Title 22 of the Louisiana Revised Statutes. Pursuant to R.S. 22:2191, such demand must be in writing, must specify in what respects such person is aggrieved and the grounds to be relied upon as the basis for relief to be demanded at the hearing, and must be made within 30 days after the failure to approve any filing, notice of disapproval of any filing, or the notice of withdrawal of approval of any filing when such notice is mailed, faxed or delivered to the aggrieved party at his last known address.

K. Maintenance of Records; Alteration of Forms Prohibited

1. Every person filing policy forms, or related forms, for approval by the department shall maintain the original set of any and all forms as returned by the department, along with all related correspondence and transmittal documents from the department. Alternatively, images of such documents may be maintained in electronic/digital form. Such files shall be available for inspection by the department upon request, and must be maintained for a period of five years after the forms have been withdrawn from the market in accordance with Paragraph H.3 hereof and no coverage issued on risks in this state utilizing such forms remains in force.

2. The alteration of, or any change to, any such form approved by the department is prohibited. Any such altered or changed form shall be submitted to the department as a new filing, and shall comply with all provisions of this Section applicable to a new filing. This Subsection shall not apply to typographical corrections and format improvements that do not affect the terms, provisions or clarity of the product.

3. A change of company name or logo, a change of address, and changes in listed officers do not require a new filing of forms when the department is otherwise properly notified of such change, and a copy of such notification is maintained on file by the insurer. If an endorsement or rider is to be added denoting such change, the standard filing fee is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, *Directive* 169, R.S.22:861 and R.S. 22:862.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2544 (December 2002), amended LR 33:105 (January 2007), LR 42:

§10113. Filing and Review of Property and Casualty Insurance Policy Forms and Related Matters

A. Definitions. As used in this Section, the following terms shall have the meaning or definition as indicated herein.

Affirmative Approval—department approval, as a result of the department taking action, following compliance review of a complete filing, or a filing pursuant to Subsection D hereof.

Basic Insurance Policy Form—an insurance contractual agreement delineating the terms, provisions and conditions of a particular insurance product. It includes endorsements, and application forms where written application is required and is to be attached to the policy or be a part of the contract. It does not include policies, riders, or endorsements designed, at the request of the individual policyholder,

contract holder, or certificate holder, to delineate insurance coverage upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policy.

Certification of Compliance—certification by an insurer, executed by an officer or authorized representative of the insurer on a form prescribed by the department, that upon knowledge and belief a filing is complete and in compliance with all applicable statutes, and rules and regulations promulgated by the department. A certification of compliance must be included with any filing for certified approval.

Certified Approval—approval on the basis of an expedited review by the department of a complete filing based upon the inclusion of a statement of compliance and a certification of compliance, executed by an officer or authorized representative of the filing insurer on forms prescribed by the department. The department shall by directive determine those specific types of coverage and particular types of contracts for which the certified approval procedure is either required or available at the option of the insurer.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Complete Filing—the filing of a single insurance product, including any required filing fees; a basic insurance policy form, application form to be attached to the policy or be a part of the contract; all items required under Subsection C hereof, "General Filing Requirements," and any other requirements as may be set forth in the applicable statement of compliance.

Compliance Audit—a retrospective review conducted by the department of previously approved basic insurance policy forms to determine compliance with applicable law.

Compliance Review—department review of a filing made pursuant to this Section to determine either that the filing is in compliance with all applicable statutes, rules and regulations, or that the filing should be disapproved for noncompliance.

Deemed Approval—approval of a complete filing based upon notice, as provided herein, made to the department by the filing insurer, following expiration of the specific time periods as provided herein, where affirmative approval has not been granted and the filing has not been disapproved by the department.

Department—the Louisiana Department of Insurance.

Endorsement—a written agreement attached to an insurance product to add or subtract coverage, or otherwise modify the product.

Filing Organization—an entity authorized by the Commissioner to act as an advisory or rating organization on behalf of its members and subscribers.

Insurance Product—a basic insurance policy form delineating the terms, provisions and conditions of a specific type of coverage under a particular type of contract, or a basic insurance policy form which combines more than one line of business within one policy form at a single premium.

Insurer—every person engaged in the business of making contracts of insurance, as further defined in R.S. 22:46(10).

Method of Marketing—marketing either through independent or captive agents; telephone, electronic mail or

direct mail solicitation; groups, organizations, associations or trusts; and/or the Internet.

Rate/Rule Approval—a department notice addressed to an insurer granting authorization to implement or revise rates and/or rules on a specified date.

Required Filing Fee—the fee assessed per product or filing pursuant to state insurance law.

Rider—an endorsement to an insurance product that modifies clauses and provisions of the product, including adding or excluding coverage.

Statement of Compliance—a form prescribed by the department detailing the requirements specific to a particular form of coverage and contract type.

B. Filing Required

1. Pursuant to R.S. 22:861.A, no basic insurance policy form, other than fidelity or surety bond forms, or application form where written application is required and is to be attached to the policy or be a part of the contract, or printed rider or endorsement form, shall be issued, delivered, or used in this state unless and until it has been filed with and approved by the commissioner. Every page of each such form including rider and endorsement forms filed with the department must be identified by a form number in the lower left corner of the page.

2. A filing description must accompany every filing, describing the items included in the filing, the insurance product for which the filing is being made, and the method of marketing to be used for the product. For non-electronic paper filings, this description must be satisfied by the submission of a completed transmittal document.

C. General Filing Requirements

1. The department shall designate, by directive, those insurance products which must be filed pursuant to the requirements for certified approval as set forth in Subsection F hereof, "Time Periods and Requirements for Certified Approval of Policy Form Filings," and those insurance products which may, at the discretion of the insurer, be filed pursuant to said requirements. All insurance products not so designated shall be filed pursuant to the requirements for Compliance Review as set forth in Subsection E hereof, "Time Periods and Requirements for Compliance Review of Policy Form Filings." Filing organizations are excepted from the mandatory provisions relative to Certified Approval and may, at their option, make filings pursuant to Subsection E hereof.

2. Only complete filings will be accepted, whether by mail or as otherwise authorized. In order for the department to conduct a proper compliance review or compliance audit of an insurance product, all items associated therewith must be included. A filing of a basic insurance policy form will be determined incomplete and will be disapproved if it does not contain all applicable items.

a. All filings of an insurance product must include, in final wording, the following items, in order:

- i. required filing fee, per product, per insurance company; or required filing fee per endorsement filing; per insurance company;
- ii. forms filed for approval;
- iii. Statement of Compliance for said product;
- iv. explanation of any rate/rule impact, with a copy of any rate/rule approval letters issued by the department; if none, so state;

v. duplicate set of the policy forms filing, as filed for approval, unless filed electronically;

vi. self-addressed, stamped envelope of sufficient size for use in returning the company's set of the policy forms filed, unless filed electronically.

b. Any insurer choosing to include variable provisions in any policy form must set forth prospective options of the proposed variable text in the submitted policy form. Each section of a policy form that is variable must be identified as variable and should be enclosed in brackets. The variable text or provisions must be described as clearly as possible and include all specific possible alternatives.

c. If it is necessary to provide an explanation of or any additional information regarding the range of variability contained in the form, then a separate statement of variability must be submitted. A statement of variability must provide an explanation of all permissible variations of text or provision that could be used in a policy form offered to policyholders or certificate holders. A statement of variability must also describe in detail all variations of text or provisions that could be placed in a policy form. The variable text or language must be described as clearly as possible and include all specific possible alternatives.

d. Use of any text or language that does not reflect the variable text or provision submitted and approved by the department constitutes use of an unapproved policy form. Any changes to a statement of variability must be submitted to the department as a new filing along with the policy form(s) being amended.

3. An insurer may elect to adopt forms submitted by a filing organization, or have a filing organization file forms on its behalf. An insurer may request an effective date later than the effective date of the filing by the filing organization. Such adoptions, whether delayed or not, must be requested by letter. The Forms and Compliance Division staff of the department will verify that the insurer is a member or subscriber of the filing organization, and that the forms being adopted have been approved by the department.

a. Adoptions, including delayed adoptions, are filed for informational purposes only, but the request will be denied if the forms proposed for adoption are not approved by the department. To receive an acknowledgement of filing, the insurer's request must contain the following items, in order:

i. required filing fee, per adoption of each advisory organization's reference or item filing, per insurance company whether or not delayed;

ii. reference to the filing organization's designation/item number;

iii. line of business;

iv. name of the program; and

v. stamped, self-addressed envelope of sufficient size for use in returning the insurer's cover letter bearing the department's stamp of acknowledgement, or disapproval of an adoption, unless filed electronically.

b. An insurer may elect to non-adopt forms submitted by a filing organization. Non-adoptions are filed for informational purposes only, and must be submitted by the insurer. To receive an acknowledgement of the informational letter, it must contain the following items, in order:

i. reference to the filing organization's identification/code number;

ii. line of business;

iii. name of the program; and

iv. stamped, self-addressed envelope of sufficient size for use in returning the insurer's cover letter bearing the department's stamp of acknowledgement.

D. Exceptions. Exceptions to the requirements for a complete filing may be allowed at the discretion of the department, subject to the conditions stated herein, for the following policy forms:

1. informational filings, submitted for acknowledgement, for fidelity and surety bond forms as exempted by R.S. 22:861 A(1), and ocean marine and foreign trade insurances as exempted by R.S.22:851 A. No filing fees will be required for these filings.

2. filings for certain commercial lines, exempted pursuant to the commercial deregulation laws set by Regulation 72;

3. application forms or enrollment forms to be used with a particular insurance product, or with multiple insurance products, provided that the policy form filings and dates approved are identified for each previously approved product with which the application form will henceforth be used, and the application form is included with any subsequently filed basic insurance policy forms as needed to constitute a complete filing. No filing fees will be required for these filings;

4. forms for lines of insurance or insurance products specifically exempted pursuant to statute.

5. riders or endorsements. Filings of amendatory riders or endorsements are permitted where the insurance product to be altered was originally certified or granted affirmative approval.

a. Such filings must include either:

i. specimen copies of the pertinent previously approved or certified forms, the dates previously approved or certified, and the specific terms and provisions being amended, underlined in red or similarly emphasized; or

ii. a detailed list that includes:

(a) the department's form filing number;

(b) date of approval; and

(c) the form number for each previously approved policy form for which the amendment applies.

b. The rider or endorsement forms shall be included with any subsequently filed basic insurance policy forms as needed to constitute a complete filing.

c. Such filings must include statutory filing fees in accordance with the most current fee schedule applicable to such filings, as set forth by the Louisiana Legislature.

E. Time Periods and Requirements for Compliance Review of Policy Form Filings

1. The time periods stated in this Section do not begin until the date a complete filing, or a filing pursuant to Subsection D hereof, "Exceptions," is received by the department.

2. If a filing is incomplete, notice of disapproval in accordance with R.S. 22:862(6) will be issued for failure to comply with the requirements of this regulation.

3. A basic insurance policy form must be submitted to the department in accordance with the "General Filing

Requirements" of this Section no less than 45 days in advance of planned issuance, delivery or use.

4. If affirmatively approved by order of the commissioner prior to expiration of the 45-day period allowed for department review of a filing, the policy forms filed may be used on or after the date approved.

5. If disapproved, the policy forms filed may not be used.

6. At the expiration of 45 days, if no order has been issued affirmatively approving or disapproving a filing, the insurer shall submit written notice to the department if the filing has been deemed approved on a specific date, or advise when the filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 46, but not earlier than the 45-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 45-day period clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

7. The commissioner may send written notice prior to expiration of the initial 45-day period extending the time allowed for approval or disapproval by an additional 15 days.

a. If affirmatively approved by order of the commissioner prior to expiration of the 15-day extended period allowed for department review, the policy forms filed may be used on or after the date approved.

b. At the expiration of the 15-day extended period, if no order has been issued affirmatively approving or disapproving the policy form filing, the insurer shall submit written notice to the department if the policy form filing has been deemed approved on a specific date or, advise when the policy form filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 46 referred to in Paragraph E.6 or day 61, but not earlier than the 45 day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 15-day extended period, clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

F. Time Periods and Requirements for Certified Approval of Policy Form Filings

1. The department will make available Statements of Compliance setting forth the statutory and regulatory requirements specific to the various forms of coverage and contract types, as well as Certification of Compliance forms.

2. A policy form filing submitted for certified approval must include the following documents.

a. Statement of Compliance applicable to the form of coverage and contract type being submitted.

b. signed and dated certification of compliance;

c. all other items as set forth in Paragraph C.2 hereof.

3. If the filing is incomplete, notice of disapproval in accordance with R.S. 22:862(6) will be issued for failure to comply with the requirements of this regulation.

4. At the expiration of 15 days from acknowledged receipt of a filing by the department, if no order has been issued affirming certified approval or disapproving the policy form filing, the insurer shall submit written notice to the department if the policy form filing has been deemed approved on a specific date, or advise when the policy form filing is withdrawn from consideration. Such date specified by the insurer shall be on or after day 16, but no earlier than the 15-day expiration period. Such written notice shall be sent to the department within 30 days after the expiration of the 15-day period clearly stating the date deemed approved or withdrawn from consideration and the anticipated date to be used by the insurer (if different from the date deemed approved). Deemed approval shall not be effective until the insurer has so notified the commissioner, by certified mail/return receipt requested.

5. No insurer, through an officer or authorized representative, shall file a certification of compliance containing false attestations or from which material facts or information have been omitted. In the event that the department subsequently learns that a certification of compliance contains any inaccuracies, false attestations, or material omissions, approval of the subject forms may be withdrawn, and the insurer may be subjected to the provisions of Subsection I hereof.

G. Resubmission of Filings

1. When submitting revised forms in response to an order of disapproval, or withdrawal of approval, whether issued pursuant to Subsection E, Subsection F or Subsection I hereof, the revised forms will constitute a new filing, must comply with all provisions of this Section for such a filing, and, in addition to the required filing fee, must include:

a. an outline of the proposed revisions, referencing the specific sections and page numbers for each form being revised;

b. a restatement of the form with all necessary revisions, as set forth in the prior order of disapproval, underlined in red or similarly emphasized; and

c. a copy of the prior order of disapproval, or withdrawal of approval, issued by the commissioner on the previous filing.

2. When submitting revisions to previously approved forms, the revised forms will constitute a new filing, must be a complete filing as set forth in Subsection C hereof, "General Filing Requirements" and, in addition to the required filing fee, must include:

a. a copy of the previously approved form;

b. an outline of the proposed revisions, referencing the specific sections and page numbers for each previously approved form being revised;

c. a restatement of the form, with all proposed revisions underlined in red or similarly emphasized; and

d. a copy of the prior order of approval, issued by the commissioner on the previous filing.

3. When a previously approved form has been rewritten, it must be assigned a unique form number, and such form must be filed as an original filing.

H. Compliance and Audits

1. Approval of a basic insurance policy form does not assure perpetual compliance. Following subsequent changes in applicable law, insurers shall revise and file updated insurance products, or amendatory riders or endorsements

where appropriate, with the department for approval as required to maintain continuous compliance with the current requirements of law. This provision shall apply to all new business issued, or in-force business renewed, following any such subsequent changes in applicable law, or as otherwise expressed by the Louisiana Legislature.

2. A retrospective review process is utilized to verify compliance of approved filings and to assure that all approved filings remain in compliance with currently applicable law. Compliance audits may be conducted by random selection, prompted by complaints filed with the department or requests for information made by the department, or performed during the course of examinations conducted by the department.

3. Insurers shall notify the department in writing to advise when a previously approved basic insurance policy form will no longer be marketed in this state and is being permanently withdrawn from the market. Such notification shall be sent at a minimum 60 days prior to the market end date and shall also advise whether or not coverage issued in this state under the policy form remains in force and whether or not such existing business will continue to be renewed. The notification shall provide the policy form numbers being discontinued and dates originally approved by this department.

I. Withdrawal of Approval and Corrective Action

1. The department shall withdraw any affirmative approval of a filing previously granted, or withdraw any approval of a filing previously deemed approved by an insurer, if the department determines that any of the reasons for disapproval as stated in R.S. 22:862 apply to the filing in question. The notice of withdrawal of approval by the department shall state that such withdrawal of approval is effective 30 days after receipt of such notice by the affected insurer or immediately where there has been a violation of the Louisiana Insurance Code that results in irreparable injury, loss, or damage and injunctive relief is necessary. In the event injunctive relief is granted to the department, the insurer or its duly authorized representative shall be enjoined or restrained from engaging in any prohibitory activity set forth in the injunctive order or judgment rendered by a court of competent jurisdiction.

a. The affected insurer may request a hearing on the withdrawal of approval, by written request mailed to the department within 30 days of receipt of the notice of withdrawal of approval.

b. Upon receipt by the department of a timely request for a hearing, the 30-day notice period precedent to withdrawal of approval being effective shall be suspended for the duration of the hearing process, and shall recommence upon the date of a ruling adverse to the insurer requesting the hearing, unless injunctive relief has been requested and granted to the department by a court of competent jurisdiction. Such suspension of the notice of withdrawal of approval shall be applicable to Paragraphs I.2, 3, 4, and 5 hereof.

2. Upon receipt of the notice of withdrawal of approval by the department, the affected insurer must:

a. immediately amend its procedures to assure that all in-force business is properly administered in accordance with the findings stated in the department's withdrawal of approval;

b. immediately review and ascertain any negative impact upon covered persons caused directly or indirectly by non-compliant provisions of the forms for which department approval has been withdrawn; and

c. immediately review other products being marketed by the insurer to assure that they do not contain such non-compliant provisions.

3. Within 30 days of receipt of the notice of withdrawal of approval by the department, a corrective action plan must be submitted to the department by the affected insurer. The corrective action plan must include the following.

a. If the affected product will no longer be marketed, amendatory endorsement forms or rider forms to affect any in-force business written utilizing the non-compliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.

b. If the insurer desires to continue marketing the affected product, both:

i. a complete filing of properly revised forms in accordance with Paragraph G.1 hereof; and

ii. amendatory endorsement forms or rider forms to affect any in-force business written utilizing the non-compliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.

c. Where such a required change can be clearly explained to prospective policyholders through amendatory endorsement forms or rider forms, an insurer may request department approval to utilize its existing inventory of the policy forms in question subject to the incorporation of approved amendatory endorsement forms or rider forms. Such approval shall not extend to any reprinting of such forms.

4. Thirty days following receipt of the notice by the affected insurer, of withdrawal of approval by the department, an affected product shall not be issued by the insurer, except in accordance with a corrective action plan approved by the department. The insurer has the obligation to timely notify its marketing force, or to otherwise adjust its business operations, accordingly. In the event the affected insurer issues the product without approval from the department, and injunctive relief is necessary and granted to the department, the insurer or its duly authorized representative shall be enjoined or restrained from engaging in any prohibitory activity set forth in the injunctive order or judgment rendered by a court of competent jurisdiction.

5. The department may, in its discretion, extend the 30-day period for approval of a corrective action plan, upon the written request of the affected insurer and for good cause shown. In the event such an extension is granted, the date by which the insurer must cease issuing the affected product, except in accordance with a corrective action plan approved by the department, shall likewise be so extended.

6. Failure to timely respond as required herein shall result in a formal investigation to establish the extent of

statutory violations, followed by an administrative hearing to determine appropriate sanctions against the insurer.

7. Where the department fails to respond to a corrective action plan filed by an insurer, or takes no action whatsoever regarding such plan, the insurer may deem the subject corrective action plan approved at the expiration of the 30-day period for approval by the department.

J. Appeals and Hearings

1. Any person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Part XXIX of Title 22 of the Louisiana Revised Statutes. Pursuant to R.S. 22:2191, such demand must be in writing, must specify in what respects such person is aggrieved and the grounds to be relied upon as the basis for relief to be demanded at the hearing, and must be made within 30 days after the failure to approve any filing, notice of disapproval of any filing, or the notice of withdrawal of approval of any filing when such notice is mailed, faxed or delivered to the aggrieved party at his last known address.

K. Maintenance of Records; Alteration of Forms Prohibited

1. Every person filing policy forms, or related forms, for approval by the department shall maintain the original set of any and all forms as returned by the department, along with all related correspondence and transmittal documents from the department. Alternatively, images of such documents may be maintained in electronic/digital form. Such files shall be available for inspection by the department upon request, and must be maintained for a period of five years after the forms have been withdrawn from the market in accordance with Paragraph H.3 hereof, and no coverage issued on risks in this state utilizing such forms remains in force.

2. The alteration of, or any change to, any such form approved by the department is prohibited. Any such altered or changed form shall be submitted to the department as a new filing, and shall comply with all provisions of this Section applicable to a new filing. This Subsection shall not apply to typographical corrections and format improvements that do not affect the terms, provisions or clarity of the product.

3. A change of company name or logo, a change of address, and changes in listed officers do not require a new filing of forms when the department is otherwise properly notified of such change, and a copy of such notification is maintained on file by the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861 and R.S. 22:862.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2548 (December 2002), amended LR 33:108 (January 2007), LR 42:

§10115. Penalties

A. Pursuant to R.S. 22:44, "False or Fraudulent Material Information," in accordance with all provisions thereof, and specifically applicable to all documents required by this regulation.

1. It shall be unlawful for any person to intentionally and knowingly supply false or fraudulent material information pertaining to any document or statement required by the department.

2. Whoever violates the provisions of this Section shall be imprisoned, with or without hard labor, for not more than five years, or fined not more than \$5,000, or both.

B. Pursuant to R.S. 22:1964(12), in accordance with all provisions thereof, any violation of a prohibitory provision of this regulation shall constitute an unfair trade practice, and, after proper notice and hearing as specified by statute, may subject the insurer and its officer(s) or representative(s) to:

1. The provisions of R.S. 22:1969, including:

a. payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$100,000 unless the person knew or reasonably should have known he was in violation of applicable law, in which case the penalty shall be not more than \$25,000 for each and every act or violation, but not to exceed an aggregate penalty of \$250,000 in any six-month period; and

b. suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of applicable law.

2. The provisions of R.S. 22:1970, including:

a. a monetary penalty of not more than \$25,000 for each and every act or violation, not to exceed an aggregate of \$250,000; and

b. suspension or revocation of such person's license or certificate of authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002), amended LR 33:110 (January 2007), LR 42:

§10117. Severability

A. If any provision of this regulation, or its application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end, the provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002), amended LR 33:111 (January 2007), LR 42:

§10119. Effective Date

[Formerly §10117]

A. This regulation became effective January 1, 2003; however, the amendments to this regulation will become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, Directive 169, R.S. 22:861, R.S. 22:862 and R.S. 22:974.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002), amended LR 33:111 (January 2007), LR 42:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and

authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills

necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

Public Comments

Interested persons may submit written comments on the proposed Regulation 106 until 5 p.m., September 20, 2016, to Barry Ingram, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 78—Policy Form Filing Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in implementation costs or savings to state or local governmental units. The purpose of amending Regulation 78 is to provide a more streamlined and cost-effective means for insurance companies to file policy forms, amendments and associated documents with the Louisiana Department of Insurance (LDI), to provide uniform procedures for filing among the states, and to bring this regulation into compliance with the Affordable Care Act. This regulation applies to all insurers doing business in the state of Louisiana subject to the form filing, review, and approval provisions of the Louisiana Insurance Code.

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

The proposed rule change will have no impact on state or local governmental revenues.

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

The proposed rule change may have an economic benefit for insurance companies by providing the option of electronic filings of health, life and annuity, and property and casualty insurance policy forms. This may provide an economic benefit to insurers of not having the costs of paper or postage in filing policy forms.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

The proposed rule change will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1608#053

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 106—Replacement of Limited Benefit
Insurance Policies (LAC 37:XIII.Chapter 149)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and R.S. 22:1964 the Department of Insurance hereby gives notice of its intent to promulgate Regulation 106 to implement the provisions of Act 844, of the 2014 Regular Session of the Louisiana Legislature, which prohibits deliberate use of misrepresentation or false statements by insurance producers for the purpose of convincing a customer to replace a limited benefit insurance policy and directs the Commissioner of Insurance to promulgate rules and/or regulations addressing the replacement of limited benefit insurance policies as defined in R.S. 22:47(2)(c).

Title 37

INSURANCE

PART XIII. Regulations

**Chapter 149. Regulation Number 106—Replacement of
Limited Benefit Insurance Policies**

§14901. Purpose

A. Regulation 106 implements the provisions of Act 844, of the 2014 Regular Session of the Louisiana Legislature, specifically R.S. 22:1964(27) which mandates that the Department of Insurance promulgate rules and/or regulations addressing the replacement of limited benefit insurance policies as defined in R.S. 22:47(2)(c).

B. The purpose of this regulation is:

1. To regulate the activities of insurers and producers with respect to the replacement of limited benefit insurance policies;

2. To protect the interests of limited benefit insurance policy purchasers by establishing minimum standards of conduct to be observed in a replacement transaction. It will:

a. Assure that purchasers receive information with which a decision can be made in his or her own best interest;

b. Reduce deliberate use of misrepresentation or false statements in the sale of limited benefit replacement policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14902. Applicability and Scope

A. Regulation 106 shall apply to transactions involving existing limited benefit policies and the new sale of limited benefit insurance policies where it is known or should be known to the producer, or to the insurer if there is no

producer that the sale of the limited benefit insurance policy will result in the replacement of an existing policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14903. Authority

A. Regulation 106 is promulgated by the Commissioner pursuant to the authority granted under the Louisiana Insurance Code, R.S. 22:1 et seq., particularly R.S. 22:11, and specifically R.S. 22:1964(27).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14904. Definitions

A. For the purposes of Regulation 106 the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Existing Policy—an in-force limited benefit insurance policy or contract of insurance.

Insurer— as defined in R.S. 22:1962(C).

Limited Benefit Policy—any health and accident insurance policy designed, advertised, and marketed to supplement major medical insurance that includes accident-only, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), dental, disability income, fixed indemnity, long-term care, Medicare supplement, specified disease, vision, and any other health and accident insurance, other than basic hospital expense, basic medical-surgical expense, or other major medical insurance or as defined in R.S. 22:47(2)(c).

Producer— a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance and includes all persons or business entities otherwise referred to in the Title 22 of the Louisiana Revised Statutes as “insurance agent”, “agent”, “insurance broker”, “broker”, “insurance solicitor”, “solicitor”, or “surplus lines broker”.

Replacement— a transaction in which a new policy or contract of insurance is to be purchased, and it is known or should be known to the producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract of insurance has been or is to be lapsed, forfeited, surrendered or otherwise terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14905. Exemptions

A. Unless otherwise specifically included, this regulation shall not apply to transactions involving:

1. Group and blanket group limited benefit policies;

2. Medicare Supplement policies except as required by Regulation 33;

3. Long Term Care policies except as required by Regulation 46.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14906. Duties of Producers

A. A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer that includes a question designed to elicit information as to whether the insurance to be issued is intended to replace any other limited benefit insurance policy presently in force.

1. If the applicant indicates that there are no existing policies to be replaced, then the producer's duties with respect to replacement are complete.

2. If the applicant indicates that there are existing policies, the producer shall present to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form notice as described in Appendix A or such other form notice provided by the insurer and approved by the Commissioner of Insurance. The notice shall be signed by both the applicant and the producer attesting that the notice has been received by the applicant and that the applicant understands that he/she is replacing an existing policy.

3. Notwithstanding Paragraph A(2) above, when the sales presentation is conducted by electronic means and all signatures are obtained via electronic signature technology, the meaning of "at the time of taking the application" shall be extended to allow for the producer's submission of electronic information to the insurer. The requirements of Paragraph A(2) are deemed met when a copy of the required replacement notice electronically signed at the presentation is provided to the applicant within two business days following submission of the policy or contract of insurance to the insurer. The notice may be provided to the applicant by electronic means exclusively only if the applicant has chosen the option to receive it exclusively by electronic means. In no event shall the time for providing the notice exceed five business days from the date the applicant signed the application.

B. In connection with a replacement transaction:

1. The producer shall leave with the applicant the original or a copy of all sales material at the time an application for a new policy is completed. Electronically presented sales material shall be provided to the applicant in printed form no later than at the time of policy delivery.

2. The producer shall submit to the insurer to which an application for a policy is presented, a copy of each document required by this Section, a statement identifying any preprinted or electronically presented sales materials used, including illustrations related to the specific policy or contract of insurance purchased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14907. Duties of Insurers that Use Producers

A. Insurers shall assure compliance with the requirements of this regulation, including at least the following:

1. Informing its producers of the requirements of this regulation and incorporating the requirements of this regulation into all relevant producer training manuals prepared by the insurer;

2. Providing its producers with a written statement of the insurer's position with respect to the acceptability of

replacements and giving guidance to its producers as to the appropriateness of these transactions.

B. Insurers shall have the capacity to monitor each producer's limited benefit policy replacements for that insurer, and shall produce, upon request, and make such records available to the Department of Insurance.

C. Insurers shall require, with or as part of each application for limited benefit insurance, a signed statement by both the applicant and the producer that indicates whether the applicant has policies presently in force and whether or not any such existing policy is to be replaced.

D. If there is indication of replacement of any existing limited benefit insurance policy, the insurer shall:

1. Require with each application for limited benefit insurance a completed notice regarding replacements as contained in Appendix A or a form notice approved by the Commissioner of Insurance;

2. Produce completed and signed copies of the notice regarding replacements for at least three years after the termination or expiration of the policy that is being replaced;

3. Provide the applicant a hard copy of the required replacement notice within two business days following a producer's submission conducted by electronic means. The notice may be provided to the applicant exclusively by electronic means only if the applicant has chosen to receive it exclusively by electronic means. In order to show compliance with §14906.A(2) and (3), the provision must occur no later than five business days from the date of applicant's signing of the application.

E. In connection with a replacement transaction, be able to produce copies of any sales material as required by §14906.B, the basic illustration and any supplemental illustrations related to the specific policy which is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least three years after the termination or expiration of the policy that is being replaced.

F. The insurer shall ascertain that the sales material and illustrations required by §14906.B of this regulation meet the requirements of this regulation and are complete and accurate for the proposed policy or contract of insurance. If an application does not meet the requirements of this regulation, notify the producer and applicant and fulfill the outstanding requirements of this regulation.

G. Records required to be retained by this regulation may be maintained in paper, photograph, micro process, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14908. Duties of Direct Response Insurers

A. Direct response insurers shall deliver to the applicant, upon acceptance of the application and prior to the issuance of the policy, the notice described in Appendix B or other substantially similar form notice approved by the Commissioner of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14909. Violations and Penalties

A. Any failure to comply with this regulation shall be considered a violation of

R.S. 22:1964. Violations of this regulation shall subject the violators to penalties as provided by R.S. 22:1969, 1970 and any other applicable provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14910. Effective Date

A. Regulation 106 shall become effective upon final publication in the Louisiana Register and shall apply to any act or practice committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14911. Severability

A. If any section or provision of Regulation 106 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 106 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 106 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14912. Appendix A—Notice Required by Sec.14906

Subsection A(2)

NOTICE TO APPLICANT REGARDING REPLACEMENT OF LIMITED BENEFIT INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing limited benefit insurance and replace it with a policy to be issued by [insert company name] Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

- (1) Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits present under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
- (3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.
- (4) _____ By checking this blank, I agree to receive this notice exclusively by electronic means only.

The above "Notice to Applicant" was delivered to me on:

_____	_____
Applicant's Signature	Date
_____	_____
Producer's Signature	Date

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§14913. Appendix B—Notice Required by Sec.14908

Subsection A.

NOTICE TO APPLICANT REGARDING REPLACEMENT OF LIMITED BENEFIT INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing limited benefit insurance and replace it with a policy to be issued by [insert company name] Insurance Company. Your new policy provides thirty days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

- (1) Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits present under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
- (3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

[COMPANY NAME]

DATE MAILED OR PROVIDED TO APPLICANT

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1964 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the rule. The proposed amended

regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

Small Business Statement

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The

proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Public Comments

Interested persons may submit written comments on the proposed Regulation 106 until 5:00 p.m., September 20, 2016, to Zata Ard, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 106—Replacement of Limited Benefit Insurance Policies

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed regulation will not result in costs or savings to the state or local governmental units. The purpose of Regulation 106 is to implement the provisions of Act 844 of the 2014 Regular Session of the Louisiana Legislature which mandates that the LDI promulgate rules and/or regulations addressing the replacement of limited benefit insurance policies as defined in R.S. 22:47(2)(c). This regulation shall constitute the activities of insurers and producers with respect to the replacement of limited benefit insurance policies. In particular, this regulation requires insurers and producers to present to purchasers a notice of the replacement of insurance and both parties must sign the notice.

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

The proposed Regulation 106 will have no impact on state or local governmental revenues.

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

The proposed regulation will prevent any misinterpretation between the consumer and producer and/or insurer for the purpose of replacing limited benefit insurance policies. This will benefit both the consumer and producer/insurer in verifying any lapse in medical coverage that may be overlooked.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Regulation 106 will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1608#055

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Fees (LAC 43:XIX.Chapter 7)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly title 30 of the *Louisiana Revised Statutes* of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950

et seq. The proposed action will adopt Statewide Order No. 29-R- 16/17 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation fee schedule for the collection of application, production, and regulatory fees, and will replace the existing Statewide Order No. 29-R-15/16.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 2. Statewide Order No. 29-R

Chapter 7. Fees

§701. Definitions

Application/Request for Commercial Facility Reuse— Repealed.

Authorization for After Hours Disposal of E and P Waste— Repealed.

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 24.0.

Capable Gas—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31st in the year prior to the year in which the Invoices are issued.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31st in the year prior to the year in which the Invoices are issued.

Class I Well Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, not to exceed \$1,000,000 for fiscal year 2015-2016 and thereafter on all Class I wells permitted December 31st of the year prior to the year in which the Invoices are issued.

Class II CO2 EOR Project (AOR Review and Updates) Fee—an annual fee for an enhanced recovery project permitted by the Office of Conservation injecting carbon dioxide (CO2) down the wellbore of permitted class II injection wells under the authority of the Office of Conservation/Injection and Mining Division in conformance with Statewide Order 29-B (LAC 43.XIX.411.C et seq.) or successor regulations.

Commercial Facility Annual Closure Plan and Cost Estimate Review— Repealed.

Production Well—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of

December 31st in the year prior to the year in which the Invoices are issued. .

Regulatory Fee—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on class II wells, class III wells, storage wells, type A facilities, and type B facilities in an amount not to exceed \$2,187,500 for fiscal year 2015-2016 and thereafter. No fee shall be imposed on a class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31st in the year prior to the year in which the Invoices are issued, and located in the same field as such class II well. operators of record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

Request to Transport E and P Waste to Commercial Facilities or Transfer Stations—other oil and gas industry companies (i.e. companies that do not possess a current Office of Conservation producer/operator code or a current offshore/out-of-state waste generator code) must obtain authorization by submitting a completed (acceptable) Form UIC-23 to transport E and P waste to commercial facilities or transfer stations as required by LAC XIX.545.B.

Transfer Stations Regulatory Fee— Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009), LR 36:2567 (November 2010), LR 37:3271 (November 2011), LR 38:2930 (November 2012), LR 39:3099 (November 2013), 40:2266 (November 2014), LR 41:2376 (November 2015), LR 42:

§703. Fee Schedule for Fiscal Year 2016-2017 and thereafter

A. Application Fees

Application Fees	Amount

Application for Commercial Facility Reuse Material	Repealed.
Application for Commercial Facility Transfer Station	Repealed.

Authorization for After Hours Disposal of E and P Waste	Repealed.
Commercial Facility Annual Closure Plan and Cost Estimate Review	Repealed.
Transfer Stations Regulatory Fee (E and P Waste) - Annual	Repealed.

B. Regulatory Fees. \$2,187,500 CAP divided by a number equal to (number of non-exempt class II wells + number of Class III wells + number of storage wells) + (number of Type A facilities X 10 plus number of Permits to Construct Type A facilities X 5) + (number of Type B

facilities X 5 plus number of Permits to Construct Type B facilities X 2.5)

1. The resulting value will equal the annual regulatory fee for non-exempt Class II wells, Class III wells, and storage wells.

2. The annual regulatory fee for Type A facilities will be the non-exempt Class II well, Class III well, and storage well regulatory fee times a factor of 10.

3. The annual regulatory fee for Type A facility permits to construct will be the non-exempt Class II well, Class III well, and storage well regulatory fee times a factor of 5.

4. The annual regulatory fee for Type B facilities will be the non-exempt Class II well, Class III well, and storage well regulatory fee times a factor of 5.

5. The annual regulatory fee for Type B facility permits to construct will be the non-exempt Class II well, Class III well, and storage well regulatory fee times a factor of 2.5.

6. Conservation will perform this calculation annually and will post the individual regulatory fee amount on the DNR website no later than July 20th of each year

C. Class I Well Fees. \$1,000,000 CAP divided by a number equal to the number of active Class I wells plus the number of permits to construct Class I wells X 0.5.

1. Conservation will perform this calculation annually and will post the individual regulatory fee amount on the DNR website no later than July 20th of each year

D. Exceptions

1. Operators of record of each class I injection/disposal well and each type A and B commercial facility and transfer station that is permitted, but has not yet been constructed, are required to pay an annual fee of 50 percent of the applicable fee for each well or facility.

2. Operators of record of each inactive Type A and B facility which have voluntarily ceased the receipt and disposal of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual regulatory fee of 50 percent of the annual fee for each applicable Type A or B facility.

3. Operators of record of each inactive Type A or B facility which have voluntarily ceased the receipt and disposal of E and P waste, have completed Office of Conservation approved closure activities and are conducting a post-closure maintenance and monitoring program, are required to pay an annual regulatory fee of 25 percent of the annual fee for each applicable Type A or B facility.

4. Operators of record of each inactive transfer station which have voluntarily ceased the receipt and transfer of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable facility.

5. Operators of record of each inactive transfer station which have voluntarily ceased the receipt and transfer of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable facility.

E. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	27
Tier 2	1 - 5,000	155
Tier 3	5,001 - 15,000	445
Tier 4	15,001 - 30,000	739
Tier 5	30,001 - 60,000	1,165
Tier 6	60,001 - 110,000	1,622
Tier 7	110,001 - 9,999,999	2,025

F. Pipeline Safety Inspection Fees

1. Owners/operators of jurisdictional gas pipeline facilities are required to pay an annual gas pipeline safety inspection fee of \$1.00 per service line, or a minimum of \$400, whichever is greater.

2. Owners/operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual hazardous liquids pipeline safety inspection fee of \$44.80 per mile, or a minimum of \$800, whichever is greater.

3. Owners/operators of jurisdictional gas transmission/gathering pipeline facilities are required to pay an annual transmission/gathering pipeline safety inspection fee of \$44.80 per mile, or a minimum of \$ 800, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2461 (November 2007), LR 34:2405 (November 2008), LR 35:2463 (November 2009), LR 36:2569 (November 2010), LR 37:3273 (November 2011), LR 38:2931 (November 2012), LR 39:3099 (November 2013), LR 40:2267 (November 2014), LR 41:2378 (November 2015), LR 42:

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-16/17 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This order (Statewide Order No. 29-R- 16/17) supersedes Statewide Order No. 29-R-15/16 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:2464 (November 2009), LR 36:2570 (November 2010), LR 37:3274 (November 2011), LR 38:2931 (November 2012), LR

39:3100 (November 2013), LR 40:2267 (November 2014), LR 41:2379 (November 2015), LR 42:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interest parties will be afforded the opportunity to submit data, views, or arguments, in writing. Written comments will be accepted by hand delivery or USPS only, until 4:30p.m., September 12, 2016, at the Office of Conservation, Executive Division, P.O. Box 94275, Baton Rouge, LA 70804-9275; or Office of Conservation, Executive Division, 617 North Third Street, Room 931, Baton Rouge, LA 70802.

Reference Docket No. 16-219. All inquiries should be directed to Todd Keating at the above addresses or by phone to (225)342-5507. No preamble was prepared.

Richard P. Ieyoub
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Fees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to the state or local governmental units as a result of the proposed rule changes. The proposal provides for additions and changes in the definitions, the fee schedule and the severability and effective date of the Office of Conservation General Operations Statewide Order No. 29-R. The severability and effective date of the proposed rule is November 20, 2016. Consistent with Act 435 of 2016 and Act 277 of 2016, the proposed rule will change or increase certain annual Pipeline fees and add a two cents per barrel fee (Commercial Waste Fee) on exploration and production waste delivered from the original generator of waste.

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

The proposed rule changes will likely result in an annual increase of approximately \$520,000 of anticipated Statutory Dedication – Oil and Gas Regulatory Fund revenue collections. Consistent with Act 435 of 2016, the proposed rule will change or increase the Pipeline fee caps on the annual pipeline facility safety and odorization inspections, the annual fee on gas gathering or transmission system, and the annual transportation of hazardous liquids fee by 69.4% over FY16 Pipeline fees collections (as of June 30, 2016). Consistent with Act 435 of 2016 and Act 277 of 2016, the proposed rule will change or increase certain annual Pipeline fees and the per barrel fee on exploration and production waste: annual pipeline facility safety and odorization inspection fee from \$22.40 per mile to one dollar per service line (R.S. 30:560) or four hundred dollars per pipeline facility, whichever is greater, annual fee on gas gathering or transmission system from \$22.40 per mile or

minimum of \$400 per facility to \$44.80 per mile or minimum of \$800 per facility (R.S. 30:560), and annual transportation of hazardous liquids fee from \$22.40 per mile or minimum of \$400 per facility to \$44.80 per mile or minimum of \$800 per facility (R.S. 30:706).

Additionally, the proposed rule will add a two cents per barrel fee (Commercial Waste Fee) on exploration and production waste delivered from the original generator of waste to Office of Conservation permitted off-site commercial facilities, and Transfer Stations permitted by the Office of Conservation for waste transfer to out-of-state treatment or disposal facilities. The Commercial Waste fee will replace projected revenue (\$119,150) that was to be generated by the following rescinded fees: Application for Commercial Facility Reuse Material, the Application for Commercial Facility Transfer Station, Authorization for After-Hours disposal of E&P Waste, Commercial Facility Annual Closure Plan and Cost Estimate Review, and Annual Transfer Station Regulatory Fee. The increased revenue will be deposited into the Oil and Gas Regulatory Fund.

No effect on revenue collections of local governmental units is anticipated.

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

The primary groups affected by these rules are pipeline operators, and facilities. Changes or increases to certain annual Pipeline fees: annual pipeline facility safety and odorization inspection fee from \$22.40 per mile to one dollar per service line or four hundred dollars per pipeline facility, whichever is greater, annual fee on gas gathering or transmission system from \$22.40 per mile or minimum of \$400 per facility to \$44.80 per mile or minimum of \$800 per facility, and annual transportation of hazardous liquids fee from \$22.40 per mile or minimum of \$400 per facility to \$44.80 per mile or minimum of \$800 per facility could potentially increase industry expenses by approximately \$520,000 annually.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed rule changes are not expected to impact competition and employment in the public and private sector.

Gary P. Ross
Assistant Commissioner
1608#056

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Treasury Board of Trustees for the Registrar of Voters Employees' Retirement System

Calculation of Post-Drop Final Average Compensation (LAC 58:XVII.301)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, notice is hereby given that the Board of Trustees for the Registrar of Voters Employees' Retirement System has approved for advertisement this Rule for the determination of the post-DROP final average compensation under R.S. 11:2144(I). The proposed Rule is being adopted pursuant to R.S. 11:2093 which provides that the board of trustees shall promulgate rules that facilitate the proper functioning of this system. A preamble to this proposed action has not been prepared.

**Title 58
RETIREMENT**

Part XVII. Registrars of Voters Employees' Retirement System

Chapter 3. Final Average Compensation

§301. Calculation of Post-Drop Final Average Compensation

A.1. A member must work for a three month period post-DROP in order to have the member's final average compensation recalculated for any and all purposes including but not limited to:

- a. calculating the value of creditable service post-DROP;
- b. calculating any leave that is converted post-DROP; and
- c. for all other actuarial and benefit calculation purposes.

2. Otherwise, the member's financial average compensation to be utilized for service, leave, and all other actuarial and benefit calculation purposes post-DROP shall be the final average compensation used to calculate the DROP benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2093 and R.S. 11:2144(I).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Registrars of Voters Retirement System, LR 42:

Family Impact Statement

The proposed Rule for the determination of the final average compensation post-DROP under R.S. 11:2144(I) of the Registrars of Voters Employees' Retirement System should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of the 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. Specifically, there should be no known or foreseeable effect on:

1. household income, assets, and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment-and workforce development;
4. taxes and tax credits;
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

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

Any interested person may submit written data, views, arguments or comments regarding these proposed Rules to Lorraine C Dees, Director- Registrar of Voters Employees' Retirement System, by mail to P.O. Box 57, Jennings, LA. All comments must be received no later than October 20, 2016.

Lorraine C. Dees
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Calculation of Post-Drop
Final Average Compensation**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs to state or local government units as a result of this proposed rule change. The rule simply establishes the formula to be used for calculation of final average compensation post-Deferred Retirement Option Plan (DROP) as recommended by the system's actuary and as referenced in current law. The rule change states that a member must work for a three-month period post-DROP in order to have the member's final average compensation recalculated. The rule change codifies current practice into rule.

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

The proposed rule change will have no impact on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits that should affect any persons or nongovernmental group as a result of these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of these rules.

Lorraine C. Dees
Director
1608#050

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees for the State
Police Retirement System**

Election Procedures, Ballots, Tabulations, Oath of Office,
Vacancy (LAC 58:IX.Chapter 3)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Trustees for the Louisiana State Police Retirement System has approved for advertisement these rules for the election procedure for the system's board of trustees. The proposed

Rules are being adopted pursuant to R.S. 11:1302(B) which provides that the board of trustees shall promulgate rules that govern the election of members of the board. This intended action by the Louisiana State Police Retirement System complies with statutory law administered by the agency. A preamble to this proposed action has not been prepared.

Title 58

RETIREMENT

Part IX. State Police Retirement System

Chapter 3. Procedures for Election of Louisiana State Police Retirement System Trustees

§301. General Election Procedures

A. The director shall issue to the Louisiana State Police Retirement System membership a notice of each trustee office to be filled in the following timeframe:

1. between the first Monday in August and the third Monday in August, for a position with term ending December 31st;

2. between the first Monday in February and the third Monday in February, for a position with term ending June 30th, via mail, with qualifying form attached and placed on the website, such form to require applicant's name, date started in system, and for which seat the applicant is qualifying.

B. Candidates shall submit in writing to the director their intention to run for a specified office between in the following timeframe:

1. the fourth Monday in August and the second Monday in September, for a position with term ending December 31st, and

2. the fourth Monday in February and the second Monday in March, for a position with term ending June 30th.

C. The board of trustees shall designate a qualifying form. The designated qualifying form shall be posted on the website and/or mailed to the member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302(B).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees for the State Police Retirement Fund, LR 42:

§303. Ballots, Count, Tabulation, Posing, Oath of Office

A. The director shall compile a ballot for each office to be filled. Ballots shall be mailed to the membership at their home address in the following timeframe:

1. beginning the fourth Monday of September through the second Monday of October, for a position with term ending December 31st

2. beginning the fourth Monday of March through the second Monday of April for a position with term ending June 30th.

a. The ballots shall be issued to members who are eligible to vote for this particular candidate pursuant to R.S. 11:1302 ("qualified member") as of September 1 of that year; and

b. the member must be a qualified member as of the date the System counts the ballot in order for that member's ballot to be counted.

c. In addition to the ballot the director shall mail an envelope in which to enclose the ballot, on which the qualified member must sign his or her name, and a return

envelope for the sealed ballot to be returned to 9224 Jefferson Hwy, Baton Rouge, LA 70809 and instructions.

d. The director shall inform each member in this mailing that results of the vote shall be promulgated on the system's website in late November or early December (for a position with term ending December 31st) or late May or early June (for a position with term ending June 30th).

e. Voted ballots shall be accepted through the fourth Monday in October at 4:30 p.m. (for a position with term ending December 31st) or through the fourth Monday in April at 4:30 pm (for a position with term ending June 30th).

f. A date and time shall be placed on each ballot envelope received by the director across the envelope flap.

B. Ballots shall be held inviolate by the director.

1. The director shall call a special meeting of the retirement staff, and notify the public by placing notice on the LSPRS website that anyone may attend, at which time the retirement staff shall count and tabulate ballots between November 1 and December 10th (for a position with term ending December 31st) and between May 1 and June 10th (for a position with term ending June 30th)

2. The director shall ensure that the board and the candidates are informed of the results of the vote thereafter. At next board meeting, the board of trustees shall announce the results.

C. The director shall issue to the elected trustee an oath of office.

1. The trustee shall take the oath at the first board meeting of the year in which the Trustee takes office.

a. The oath shall contain a term of office effective January 1st of this year for a position ending December 31st and effective July 1st for a position ending June 30th.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302(B).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees for the State Police Retirement Fund, LR 42:

§305. Vacancy

A. Should a vacancy occur, the board shall hold a special election as soon as reasonably possible to fill this unexpired seat.

1. If the unexpired term of office for this seat is less than two years from the date the election results are expected, the election shall be for the unexpired term of office and for the next five year term.

2. If the unexpired term of office for this seat is two years or greater from the date the election results are expected, then the election shall be for the unexpired term of office only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302(B).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees for the State Police Retirement Fund, LR 42:

Family Impact Statement

The proposed rule for the election of the Louisiana State Police Retirement System should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;

2. the authority and rights of parents regarding the education and supervision of their children;

3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of the proposed rules 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. Specifically, there should be no known or foreseeable effect on:

1. household income, assets, and financial security.
2. early childhood development and preschool through postsecondary education development.
3. employment and workforce development.
4. taxes and tax credits.
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

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

Any interested person may submit written data, views, arguments or comments regarding these proposed rules to Kim Gann, Assistant Director of the Louisiana State Police Retirement System by mail to Louisiana State Police Retirement System, 9224 Jefferson Hwy., Baton Rouge, LA 70809. All comments must be received no later than October 15, 2016.

Irwin L. Phelps
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Election Procedures, Ballots, Tabulations, Oath of Office, Vacancy

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to state or local governmental units as a result of the proposed rule change. The proposed rule codifies the current practice of governing elections into rule. The State Police Retirement System has conducted elections in the same manner since its inception and the rule change will reflect the current way elections are conducted.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
These regulations will have no impact on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits that should affect any persons or nongovernmental group as a result of these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of these rules.

Irwin L. Phelps
Director
1608#051

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the Assessor's Retirement Fund**

Actuarial Equivalent and Full-Time Determinations
(LAC 58:XIX.103 and 107)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, notice is hereby given that the Board of Trustees for the Louisiana Assessors' Retirement Fund has approved for advertisement these rules for the determination of the actuarial equivalent under R.S. 11:1402(8) and the definition of "full-time" in R.S. 11:1410(B)(1). The proposed Rules are being adopted pursuant to R.S. 49:950 et seq., which provides this agency the authority to promulgate rules that facilitate the proper functioning of this system. A preamble to this proposed action has not been prepared.

Title 58

RETIREMENT

Part XIX. Assessors' Retirement Fund

Chapter 1. General Provisions

§103. Actuarial Equivalent

- A. ...
- B. Effective July 1, 2012, as provided by R.S. 11:1402(8) actuarial equivalent shall be defined by using the following assumptions.
 1. Interest shall be compounded annually at the rate of 7.5 percent per annum.
 2. Mortality rates shall be based on the RP-2000 Combined Healthy Table unisex based on 65 percent males and 35 percent females for retirees and 35 percent males and 65 percent females for beneficiaries.
- C. Effective October 1, 2015, as provided by R.S. 11:1402(8) actuarial equivalent shall be defined by using the following assumptions.
 1. Interest shall be compounded annually at the rate of 7.25 percent per annum (except as provided below).
 2. For Single Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy Tables unisex based on 35 percent males and 65 percent females.
 3. For Joint Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy Tables unisex based on 65 percent males and 35 percent females for retirees and 35 percent males and 65 percent females for beneficiaries.
 4. For Disability Award Lifetime Equivalences, mortality rates shall be based on the RP-2000 Disabled Lives

Tables unisexed based on 35 percent males and 65 percent females.

5. For Drop Balance Life Annuity Conversions, mortality rates shall be based on the RP-2000 Combined Healthy Table set back 3 years and unisexed based on 100 percent males and 0 percent females with interest at 6 percent per annum.

D. Effective October 1, 2016, as provided by R.S. 11:1402(8) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 7.00 percent per annum (except as provided below).

2. For Single Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy Tables set forward 1 year for males with no set forward for females and unisexed based on 40 percent males and 60 percent females.

3. For Joint Life option factors, mortality rates shall be based on the RP-2000 Combined Healthy Tables set forward 1 year for males with no set forward for females and unisexed based on 65 percent males and 35 percent females for retirees and 35 percent males and 65 percent females for beneficiaries.

4. For Disability Award Lifetime Equivalences, mortality rates shall be based on the RP-2000 Disabled Lives Tables unisexed based on 40 percent males and 60 percent females.

5. For Drop Balance Life Annuity Conversions, mortality rates shall be based on the RP-2000 Healthy Annuitant Table set back 1 year and projected to 2030 using Scale AA, and unisexed based on 100 percent males and 0 percent females with interest at 6 percent per annum.

E. Thereafter, these assumptions shall be adopted by resolution of the board, based on recommendations of its actuary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1402(8), 11:1404(A), and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Assessors' Retirement Fund, LR 39:2188 (August 2013), amended LR 42:

§107. Definitions

Full-Time—regularly scheduled to work a minimum of 35 hours per week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1402(8), 11:1404(A), and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Assessors' Retirement Fund, LR 42:

Family Impact Statement

The proposed Rule for the determination of the of the actuarial equivalent under R.S. 11:1402(8) and for defining "full-time" under R.S. 11:1410(B)(1) of the Assessors' Retirement System should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or

6. the ability of the family or a local government to perform the function as contained in the proposed rules.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of the proposed rules 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. Specifically, there should be no known or foreseeable effect on:

1. household income, assets, and financial security.
2. early childhood development and preschool through postsecondary education development.
3. employment and workforce development.
4. taxes and tax credits.
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

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

Any interested person may submit written data, views, arguments or comments regarding these proposed rules to Nannette Menou, Executive Director of Louisiana Assessors' Retirement Fund, 3060 Valley Creek, P.O. Box 14699, Baton Rouge, LA 70808. All comments must be received no later October 3, 2016.

Nannette Menou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Actuarial Equivalent and Full-Time Determinations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs to state or local government units as a result of this proposed rule change. The rule change codifies previous actuarial equivalent changes and definition of "full-time" employee into the rule. The actuarial equivalents include the actuarial rate of return and mortality rates based on different retirement benefit options. The rule change defines meaning of full-time employee as a minimum of thirty-five (35) hours per week.

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

The proposed rule change will have no impact on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits that should affect any persons or nongovernmental group as a result of these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There is no estimated impact on competition and employment as a result of these rules.

Nannette Menou
Executive Director
1608#040

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

Public Hearing—Substantive Changes to Proposed Rule OS093—Reportable Quantity List for Pollutants (LAC 33:I.3905, 3917, and 3931)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to the proposed amendments to LAC 33:I.3905, 3917, and 3931 (Log # OS093S2), which were originally noticed as OS093 in the December 20, 2015, issue of the *Louisiana Register*. (1608Pot1).

The department has made additional substantive changes to OS093 to address comments received during the public comment period of proposed rule OS093S. The changes specify that the provisions of LAC 33:IX.Chapter 9 (Spill Prevention and Control) shall not apply to those substances listed in LAC 33:I.3931.A.1.c, LAC 33:I.3931.A.1.d, or LAC 33:I.3931.B.2, but in no other reportable quantity list specified in Subchapter E of LAC 33:I.Chapter 39.

In the interest of clarity and transparency, the department is providing public notice and an opportunity to comment on the proposed changes to the amendments of the regulations in question. The department is also providing an Interim Response to Comments received on the initial regulation proposal.

A ~~strikeout~~/underline/*shaded* version of the proposed rule that distinguishes original proposed language from language changed by this proposal and the Interim Response to Comments are available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

Public Hearing

A public hearing on the substantive changes will be held on September 28, 2016, at 1:30 p.m. in the Galvez Building, Natchez Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation by OS093S. Such comments must be received no later than September 28, 2016, at 4:30 p.m., and should be sent to Deidra Johnson,

Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302; e-mailed to deidra.johnson@la.gov; or faxed to (225) 219-4068. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS093S. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These substantive changes are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

1608#045

POTPOURRI

Department of Health and Hospitals Bureau of Health Services Financing

Public Hearing—Substantive Changes to Proposed Rule Hospital Licensing Standards Obstetrical and Newborn Services (LAC 48:I.9505, 9509 and 9513)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent in the March 20, 2016 edition of the *Louisiana Register* (LR 42:473-480) to amend LAC 48:I.9505-9515. This Notice of Intent proposed to amend the provisions governing the hospital licensing standards in order to align these provisions with current standards of practice and staffing guidelines.

The department conducted a public hearing on this Notice of Intent on April 28, 2016 to solicit comments and testimony on the proposed Rule. As a result of the comments received, the department proposes to amend the provisions in §9505, §9509, and §9513 of the proposed Rule.

Taken together, all of these revisions will closely align the proposed Rule with the department's original intent and the concerns brought forth during the comment period for the Notice of Intent as originally published. No fiscal or economic impact will result from the amendments proposed in this notice.

**Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration**

Subpart 3. Licensing and Certification

Chapter 95. Hospitals

**Subchapter S. Obstetrical and Newborn Services
(Optional)**

§9505. General Provisions

A. This Subchapter S requires that the level of care on the neonatal intensive care unit shall match or exceed the level of obstetrical care for each level of obstetric service, except for free standing children’s hospitals. All hospitals with existing obstetrical and neonatal services shall be in compliance with this Subchapter S within one year of the promulgation date of this Rule. All new providers of obstetrical and neonatal services shall be required to be in compliance with this Subchapter S immediately upon promulgation.

Note: For facilities that change the level of care and services of the facility’s NICU unit, either decreasing or increasing the level provided, the facility shall submit an attestation of this change to the department’s Health Standards Section (HSS) in writing and on the appropriate state neonatal services Medicaid attestation form. Such notice shall be submitted to HSS within 90 days of the facility’s change in NICU level provided. For facilities that change the level of care and services of the facility’s obstetric unit, by either decreasing or increasing the level provided, the facility shall submit written notice of this change to HSS within 90 days of such change.

B. - F. ...

G. The hospital shall have data collection and retrieval capabilities in use, and shall cooperate and report the requested data to the appropriate supervisory agencies to review.

AUTHORITY NOTE: Promulgated in accordance with 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 29:2427 (November 2003), amended LR 33:284 (February 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9509. Obstetrical Unit Functions

A. - A.1.f. ...

g. The hospital shall have a program in place to address the needs of the family, including parent-sibling-neonate visitation.

h. The hospital shall have a written transfer agreement with another hospital that has an approved appropriate higher level of care.

i. - l. Repealed.

A.2. - B.1.e ...

2. Personnel Requirements

a. The chief of obstetric services shall be a board-certified obstetrician or a board eligible candidate for certification in obstetrics. This obstetrician has the responsibility of coordinating perinatal services with the neonatologist in charge of the neonatal intensive care unit (NICU).

b. - c. ...

d. A board-certified or board eligible OB-GYN physician shall be available 24 hours a day.

Exception: For those hospitals whose staff OB-GYN physician(s) do not meet the provisions of §9509.B(2)d, such physician(s) may be grandfathered as satisfying the requirement of §9509.B(2)d when the hospital has documented evidence that the OB-GYN physician(s) was granted clinical staff privileges by the hospital prior to the effective date of this Rule. This exception applies only to the physician at the licensed hospital location and is not transferrable.

B.2.e. - C.1.d. ...

e. Participation is required in a statewide quality collaborative and database selected by the Medicaid Quality Committee, Maternity subcommittee, with a focus on quality of maternity care. Proof of such participation will be available from the LDH website.

C.1.f. - C.2.g. ...

h. A lactation consultant or counselor shall be on staff to assist breastfeeding mothers as needed.

i. The lactation consultant or counselor shall be certified by a nationally recognized board on breastfeeding.

i. A nutritionist and a social worker shall be on staff and available for the care of these patients as needed.

D. - E.2.a. ...

b. Participation is required in the department’s designated statewide quality collaborative program.

Note: The hospital shall acquire and maintain documented proof of participation.

c. Repealed.

Note: Repealed.

E.3. - E.3.c.iv. ...

d. Obstetrical Medical Subspecialties

Table 1 - Obstetrical Medical Subspecialties

Each higher level Obstetrical unit shall meet the requirements of each lower level Obstetrical unit.				
Level I	Level II	Level III	Level III Regional	Level IV
Board Certified or Eligible OB/GYN or Family Practice Physician	Board Certified/Eligible OB/GYN §9509.B(2)d -See Exception	Board Certified/Eligible Anesthesiologist	Board Certified/Eligible Anesthesiologist	Board Certified/Eligible Anesthesiologist
Anesthesia services	Anesthesia services*	Board Certified OB/GYN	Board Certified OB/GYN	Board Certified OB/GYN
Radiology services	Clinical Pathologist ¹	Board Certified/Board Eligible MFM ^{1**}	Board Certified/Board Eligible MFM ^{**}	Board Certified MFM ^{**}

Table 1 - Obstetrical Medical Subspecialties				
Each higher level Obstetrical unit shall meet the requirements of each lower level Obstetrical unit.				
Level I	Level II	Level III	Level III Regional	Level IV
Ultrasonography	Clinical Radiologist	Clinical Pathologist ¹	Clinical Pathologist ¹	Clinical Pathologist ¹
Laboratory services	MFM ^{1**}	Clinical Radiologist ¹	Clinical Radiologist ¹	Clinical Radiologist ¹
Electronic fetal monitoring	Lactation Consultant/Counselor See §9509.B(h.i)	Critical Care ¹	Critical Care ¹	Critical Care ¹
		General Surgery ¹	General Surgery ¹	General Surgery ¹
		Infectious Disease ¹	Infectious Disease ¹	Infectious Disease ¹
		Urology ¹	Urology ¹	Urology ¹
		Hematology ¹	Hematology ¹	Hematology ¹
		Cardiology ¹	Cardiology ¹	Cardiology ¹
		Nephrology ¹	Nephrology ¹	Nephrology ¹
		Neurology ¹	Neurology ¹	Neurology ¹
		Neonatology ¹	Neonatology ¹	Neonatology ¹
		Pulmonology ¹	Pulmonology ¹	Pulmonology ¹
		Lactation Consultant/Counselor	Lactation Consultant/Counselor	Lactation Consultant/Counselor
		Nutritionist	Nutritionist	Nutritionist
		Social Worker	Social Worker	Social Worker
				Cardiothoracic Surgery ¹
				Gastroenterology ¹
				Endocrinology ¹
				Neurosurgery ¹
¹ physician shall be available in person on site as needed by the facility.				
*Anesthesia services shall be available 24 hours a day to provide labor analgesia and surgical anesthesia. A board-certified/eligible anesthesiologist with specialized training or experience in obstetric anesthesia shall be available 24 hours a day for consultation.				
**Licensed MFM shall be available for consultation onsite, by telephone, or by telemedicine, as needed.				

AUTHORITY NOTE: Promulgated in accordance with 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 29:2427 (November 2003), amended LR 33:284 (February 2007, amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§9513. Neonatal Unit Functions

A. - A.1.f. ...

g. Repealed.

A.2. - C.2.f.i. ...

3. Equipment Requirements

a. This unit shall have the following support equipment, in sufficient number, immediately available as needed in the hospital that includes but is not limited to,

i. advanced imaging with interpretation on an urgent basis (computed tomography, ultrasound (including

cranial ultrasound), MRI, echocardiography and electroencephalography);

NOTE: Level III facilities shall have an arrangement to have such testing interpreted by someone qualified in neonatal diagnostic testing; and

C.3.a.ii. - D.2. ...

a. For medical sub-specialty requirements refer to Table 1 - Neonatal Medical Subspecialties and Transport Requirements.

Exception: Those hospitals which do not have a member of the medical staff who is a board certified/eligible pediatric anesthesiologist but whose anesthesiologist has been granted staff privileges to perform pediatric anesthesiology, such physician(s) may be grandfathered as satisfying the requirement of §9513(2)a when the hospital has documented evidence that the anesthesiologist was granted clinical staff privileges by the hospital prior to the effective date of this Rule. This exception applies only to such physician at the licensed hospital location and is not transferrable.

D.2.b. - E.2.a. ...

b. Neonatal Medical Subspecialties and Transport Requirements

Table 1 - Neonatal Medical Subspecialties and Transport Requirements				
Text denoted with asterisks (*) indicates physician shall be available in person on site as needed by the facility. Each higher level NICU unit shall meet the requirements of each lower level NICU unit.				
Level I (Well Nursery)	Level II	Level III	Level IIIS	Level IV
Board Certified/Eligible Pediatric or Family Practice Physician	Board Certified/Eligible Pediatric or Family Practice Physician	Pediatric Cardiology ¹	Pediatric Surgery ⁴	Pediatric Surgery ⁴
	Board Certified Neonatologist	Ophthalmology ²	Pediatric Anesthesiology ⁵ §9513(2)a- See Exception	Pediatric Anesthesiology ⁵
	Social Worker		Neonatal Transport	Neonatal Transport
	Occupational Therapist	Social Worker Ratio 1:30	Ophthalmology ^{2*}	Ophthalmology ^{2*}
	Physical Therapist	OT or PT/neonatal expertise	Pediatric Cardiology*	Pediatric Cardiology*
	Respiratory Therapists	RD/training in perinatal nutrition	Pediatric Gastroenterology*	Pediatric Cardiothoracic Surgery*
	Registered dietician/nutritionist	RT/training in neonate ventilation	Pediatric Infectious Disease*	Pediatric Endocrinology*
	Laboratory Technicians	Neonatal feeding/swallowing-SLP/ST	Pediatric Nephrology*	Pediatric Gastroenterology*
	Radiology Technicians		Pediatric Neurology ^{3*}	Pediatric Genetics*
			Pediatric Neurosurgery*	Pediatric Hematology-Oncology*
			Pediatric Orthopedic Surgery*	Pediatric Infectious Disease*
			Pediatric Otolaryngology ^{6*}	Pediatric Nephrology*
			Pediatric Pulmonology*	Pediatric Neurology ^{3*}
				Pediatric Neurosurgery
				Pediatric Orthopedic Surgery
				Pediatric Otolaryngology ^{7*}
				Pediatric Pulmonology*
				Pediatric Radiology*
				Pediatric Urologic Surgery*
			Transport note:	
¹ There shall be at least one board certified or board eligible pediatric cardiologist as a member of medical staff. For Level III facilities, staff using telemedicine shall be continuously available.			Transport shall be in accordance with national standards as published by the American Academy of Pediatrics' Section on neonatal and pediatric transport and in accordance with applicable Louisiana statutes.	

Table 1 - Neonatal Medical Subspecialties and Transport Requirements

Text denoted with asterisks (*) indicates physician shall be available in person on site as needed by the facility. Each higher level NICU unit shall meet the requirements of each lower level NICU unit.

Level I (Well Nursery)	Level II	Level III	Level IIIS	Level IV
² There shall be at least one board certified or board eligible ophthalmologist with sufficient knowledge and experience in retinopathy or prematurity as a member of the medical staff. An organized program for monitoring retinotherapy of prematurity shall be readily available in Level III and for treatment and follow-up of these patients in Level IIIS and IV facilities.				
³ There shall be at least one board certified or board eligible pediatric neurologist as a member of medical staff.				
⁴ For pediatric surgery, the expectation is that there is a board certified or eligible pediatric surgeon who is continuously available to operate at that facility.				
⁵ There shall be at least one board certified or board eligible pediatric anesthesiologist as a member of the medical staff.				
⁶ Board eligible or certified in Otolaryngology; special interest in Pediatric Otolaryngology or completion of Pediatric Otolaryngology Fellowship.				
⁷ Board eligible or certified in Otolaryngology; completion of Pediatric Otolaryngology Fellowship.				
For specialties listed above staff shall be board eligible or board certified in their respective fields with the exception of otolaryngology as this field has not yet pursued certification.				

AUTHORITY NOTE: Promulgated in accordance with 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 29:2429 (November 2003), amended LR

33:286 (February 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. A public hearing on these substantive changes to the proposed Rule is scheduled for Thursday, September 29, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

1608#079

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Operator	Field	District	Well Name	Well Number	Serial Number
Joe W Brown	Valentine	L	Valentine	017	54378
Core Exploration & Prod Corp	Lyles	L	J A Bel Est Et Al	001	200857
C. L. Morris, Inc.	Caddo Pine Island	S	Crystal Oil Company B	003	171931(28)
Mcrae Exploration, Inc.	Wildcat-So La Lafayette Dist	L	Phillip Klump	001	154417
Herman Sanford	Big Creek	M	Sanford	001	200986
Herman Sanford	Big Creek	M	Sanford	002	202117

Richard P. Ieyoub
Commissioner

1608#032

POTPOURRI

**Department of Public Safety and Corrections
Oil Spill Coordinator's Office**

Bay St. Elaine Oil Spill
Notice of Intent to Conduct Restoration Planning

Action: Notice of Intent to Conduct Restoration Planning (NOI)

Agencies: Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Coastal Protection and Restoration Authority of Louisiana (CPRA); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF), collectively referred to herein as the "Trustees".

Authorities: The Oil Pollution Act of 1990 (OPA) (33 U.S.C. § 2701 *et seq.*) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (La. Rev. Stat. 30:2451 *et seq.*) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to natural resources and services resulting from oil spills in Louisiana. In accordance with OPA and OSPRA, the Trustees have determined that impacts to natural resources and services resulting from the unauthorized discharge of oil from Hilcorp Energy Company's flowline into Bay St. Elaine, Louisiana beginning on or about October 25, 2014 (NRDA case file # LA2014_1025_1120 [Bay St. Elaine 2014]), referred to herein as the "Incident," warrants conducting a Natural Resource Damage Assessment (NRDA) that will include restoration planning. Hilcorp Energy Company (Hilcorp) is

Operator	Field	District	Well Name	Well Number	Serial Number
Fidelity Oil & Royalty Co	Savoy	L	Yves Guillory	001	55632
L. C. Simth, Jr. Oil Properties	Wildcat-No La Monroe Dist	M	D P Burnside	001	136122
P F Green Sr	Big Creek	M	Purcell Green	002	200445
P F Green Sr	Big Creek	M	Vanderslice	001	200446
Texas Union Oil Corp	Caddo Pine Island	S	Thigpen	001	37779
M. B. Chastain & Paul Cooper	Caddo Pine Island	S	Stiles	C-1	32490(30)
Cn Operating Company	Greenwood -Waskom	S	J B Atkins on B Swd	002	107970
C. F. Debardeleben	Caddo Pine Island	S	Crystal	A-1	37083
Percell F Green Jr	Big Creek	M	Purcell Green	001	197834
Percell F Green Jr	Big Creek	M	Vanderslice	002	201205

the Responsible Party and therefore is liable for natural resource damages resulting from the Incident.

Purpose: Based on determinations required by 15 C.F.R. §§ 990.41(a) and 990.42(a), and in accordance with the regulations for OPA at 15 C.F.R. § 990.44 and OSPRA at L.A.C. 43:XXIX.123, the Trustees are issuing this NOI to inform the public that they are proceeding to the restoration planning phase of the NRDA and will be opening an Administrative Record (AR) pursuant to 15 C.F.R. § 990.45 and L.A.C. 43:XXIX.127. The AR will be available to the public and document the basis for the Trustees' decisions pertaining to injury assessment and selection of restoration alternatives. The Trustees intend to assess injuries to natural resources and services resulting from the Incident and identify restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of those injured or lost natural resources and services.

Summary of Incident: On or about October 25, 2014, Hilcorp operators located a leak along one of Hilcorp's 4-inch flowlines in Bay St. Elaine. Two holes were found in the line, releasing oil into the adjacent waterway and marsh. Natural resources within the area were exposed to oil as a result of the Incident.

The area impacted by the Incident contains natural resources that provide services to the public. These natural resources and services have been exposed to oil and have experienced injury, including mortality. Natural resources and services potentially injured or lost as a result of the Incident and the associated response effort may include, but are not limited to, coastal herbaceous wetlands and associated benthos, aquatic organisms, birds, and wildlife.

The Trustees began the pre-assessment/field investigation phase of the NRDA in accordance with 15 C.F.R. § 990.43 and L.A.C. 43 XXIX.117 to determine if they had jurisdiction to pursue restoration under OPA and OSPRA, and, if so, whether it was appropriate to do so. During the pre-assessment phase, the Trustees collected and analyzed, and are continuing to analyze, the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction and/or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated assessment activities as part of the Restoration Planning Phase. Activities included, among other things, observational data collection about oiled habitats and wildlife, and collection of dead fish and wildlife.

Under the NRDA regulations applicable to OPA and OSPRA, the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning (NOI) if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met. This NOI announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured natural resources and losses resulting from the Incident. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including services, and to determine the need for, and the type and scale of restoration alternatives.

Determinations

Determination of Jurisdiction: The Trustees have made the following findings pursuant to 15 C.F.R. § 990.41:

1. The Incident resulted in the discharge of oil into or upon navigable waters of the United States. Such occurrence constitutes an "incident" within the meaning of 15 C.F.R. § 930.30.

2. The Incident was not authorized under a permit issued pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. § 1651, *et seq.*

3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under OPA.

Determination to Conduct Restoration Planning:

The Trustees have determined, pursuant to 15 C.F.R. §990.42(a), that:

1. Data collected pursuant to 15 C.F.R. § 990.43 demonstrate that injuries to natural resources have resulted from the Incident, including but not limited to, coastal herbaceous wetlands and associated benthos, aquatic organisms, birds, and wildlife.

2. The response actions did not address the injuries resulting from the Incident sufficiently to preclude restoration.

3. Feasible primary and/or compensatory restoration actions exist to address injuries from the Incident.

Based upon the foregoing determinations, the Trustees have determined to proceed with restoration planning for this Incident.

Public Participation: The Trustees invite the public to participate in restoration planning for this Incident. Public participation in decision-making is encouraged and will be facilitated through a publically available AR (described above) and publication of public notices in the *Louisiana Register*. Opportunities to participate in the process will be provided by the Trustees at important junctures throughout the planning process and will include requests for input on restoration alternatives and review of planning and settlement documents (e.g. the Trustees will be soliciting restoration projects that aim to restore natural resources and/or services that have a nexus to the injured natural resources and/or lost services; the public will be invited to review the Draft Damage Assessment and Restoration Plan/Environmental Assessment (Draft DARP/EA) and Draft Settlement Agreement documents). Public participation is consistent with all State and Federal laws and regulations that apply to the NRDA process, including Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of OSPRA, La. Rev. Stat. 30:2480; and the regulations for NRDA under OSPRA, La. Admin. Code 43:XXIX, Chapter 1.

For Further Information: For more information or to view the AR please contact the Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6606 (Attn: Gina Saizan).

Brian Wynne
Coordinator

1608#043

POTPOURRI

Department of Public Safety and Corrections Oil Spill Coordinator's Office

Torbert Oil Spill Notice Of Intent To Conduct Restoration Planning

Action: Notice of Intent to Conduct Restoration Planning (NOI)

AGENCIES: Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Coastal Protection and Restoration Authority of Louisiana (CPRA); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF), collectively referred to herein as the "Trustees".

Authorities: The Oil Pollution Act of 1990 (OPA) (33 U.S.C. § 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (La. Rev. Stat. 30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to natural resources and services resulting from oil spills in Louisiana. In accordance with OPA and OSPRA, the Trustees have determined that impacts to natural resources and services resulting from the unauthorized discharge of oil from ExxonMobil Pipeline Company's "North Line" pipeline near Torbert, Louisiana into the surrounding soil and nearby unnamed tributary beginning on or about April 29, 2012 (NRDA case file # LA2012_0429_1519 [Torbert 2012]), referred to herein as the "Incident," warrants conducting a Natural Resource Damage Assessment (NRDA) that will include restoration planning. ExxonMobil Pipeline Company (ExxonMobil) is the Responsible Party and therefore is liable for natural resource damages resulting from the Incident.

Purpose: Based on determinations required by 15 C.F.R. §§ 990.41(a) and 990.42(a), and in accordance with the regulations for OPA at 15 C.F.R. § 990.44 and OSPRA at L.A.C. 43:XXIX.123, the Trustees are issuing this NOI to inform the public that they are proceeding to the restoration planning phase of the NRDA and will be opening an Administrative Record (AR) pursuant to 15 C.F.R. § 990.45 and L.A.C. 43:XXIX.127. The AR will be available to the public and document the basis for the Trustees' decisions pertaining to injury assessment and selection of restoration alternatives. The Trustees intend to assess injuries to natural resources and services resulting from the Incident and identify restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of those injured or lost natural resources and services.

Summary Of Incident: On or about April 29, 2012, ExxonMobil's 20/22-inch-diameter "North Line" pipeline ruptured near Torbert, and crude oil spilled into the surrounding area and flowed into an unnamed drainage stream and into Bayou Cholpe. Natural resources within the area were exposed to oil as a result of the Incident.

The area impacted by the Incident contains natural resources that provide services to the public. These natural resources and services have been exposed to oil and have

experienced injury, including mortality. Natural resources and services potentially injured or lost as a result of the Incident and the associated response effort may include, but are not limited to, aquatic organisms, sediments and stream and forested habitat.

The Trustees began the pre-assessment/field investigation phase of the NRDA in accordance with 15 C.F.R. § 990.43 and L.A.C. 43 XXIX.117 to determine if they had jurisdiction to pursue restoration under OPA and OSPRA, and, if so, whether it was appropriate to do so. During the pre-assessment phase, the Trustees collected and analyzed, and are continuing to analyze, the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction and/or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated assessment activities as part of the Restoration Planning Phase. Activities included, among other things, observational data collection about oiled habitats wildlife and aquatic organisms, sediment and oil sample collection, and collection of dead fish and wildlife.

Under the NRDA regulations applicable to OPA and OSPRA, the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning (NOI) if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met. This NOI announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured natural resources and losses resulting from the Incident. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including services, and to determine the need for, and the type and scale of restoration alternatives.

Determinations:

Determination of Jurisdiction: The Trustees have made the following findings pursuant to 15 C.F.R. § 990.41:

1. The Incident resulted in the discharge of oil into or upon navigable waters of the United States. Such occurrence constitutes an "incident" within the meaning of 15 C.F.R. § 930.30.

2. The Incident was not authorized under a permit issued pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. § 1651, et seq.

3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under OPA.

Determination to Conduct Restoration Planning: The Trustees have determined, pursuant to 15 C.F.R. § 990.42(a), that:

1. Data collected pursuant to 15 C.F.R. § 990.43 demonstrate that injuries to natural resources have resulted from the Incident, including but not limited to, aquatic organisms, sediments and forested habitat.

2. The response actions did not address the injuries resulting from the Incident sufficiently to preclude restoration.

3. Feasible primary and/or compensatory restoration actions exist to address injuries from the Incident.

Based upon the foregoing determinations, the Trustees have determined to proceed with restoration planning for this Incident.

Public Participation: The Trustees invite the public to participate in restoration planning for this Incident. Public participation in decision-making is encouraged and will be facilitated through a publically available AR (described above) and publication of public notices in the Louisiana Register. Opportunities to participate in the process will be provided by the Trustees at important junctures throughout the planning process and will include requests for input on restoration alternatives and review of planning and settlement documents (e.g. the Trustees will be soliciting restoration projects that aim to restore natural resources and/or services that have a nexus to the injured natural resources and/or lost services; the public will be invited to review the Draft Damage Assessment and Restoration

Plan/Environmental Assessment (Draft DARP/EA) and Draft Settlement Agreement documents). Public participation is consistent with all State and Federal laws and regulations that apply to the NRDA process, including Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of OSPRA, La. Rev. Stat. 30:2480; and the regulations for NRDA under OSPRA, La. Admin. Code 43:XXIX, Chapter 1.

For Further Information: For more information or to view the AR please contact the Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6606 (Attn: Gina Saizan).

Brian Wynne
Coordinator

1608#044

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