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Executive Orders

EXECUTIVE ORDER JBE 16-70

Termination of Specified Executive Orders

WHEREAS, Proclamation No. 111 JBE 2016, issued on August 12, 2016, and continued by Proclamation No. 127 JBE 2016, declared a state of emergency for the State of Louisiana due to the heavy rain and flooding;

WHEREAS, the federal government has issued a major disaster declaration pursuant to the Stafford Act due to the widespread damage caused by the flooding;

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or manmade causes, in order to ensure that preparations of this State will be adequate to deal with such emergencies or disasters and to preserve the lives and property of the people of the State of Louisiana;

WHEREAS, pursuant to this authority, the following non-exhaustive list of Executive Orders were issued: JBE 16-52, concerning temporary suspension of licensure requirements for emergency medical technicians; JBE 16-54, concerning the use of state vehicles during an emergency; JBE 16-55 concerning emergency procedures for conducting state business; JBE 16-56, declaring a state of emergency in East Baton Rouge Parish; and JBE 16-59, concerning temporary suspension of licensure requirements for medical professionals and personnel licensed out-of-state; and

WHEREAS, there is no longer a need to continue certain specific emergency orders.

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: I hereby terminate Executive Orders JBE 16-52, JBE 16-54, JBE 16-55, JBE 16-56 and JBE 16-59, effective immediately.

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 11th day of October, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1611#079

EXECUTIVE ORDER JBE 16-71

Emergency Suspension of Certain Insurance Code Provisions—Amended

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721 et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or manmade causes, in order to ensure that preparations of this State will be adequate to deal with such emergencies or disasters and to preserve the lives and property of the people of the State of Louisiana;

WHEREAS, Proclamation No. 111 JBE 2016, issued on August 12, 2016, and continued by Proclamation No. 154 JBE 2016, declared a state of emergency for the State of Louisiana due to the heavy rain and flooding, which continues to threaten the safety and security of the citizens of Louisiana;

WHEREAS, Executive Order No. JBE 16-58, signed August 17, 2016, as renewed by Executive Order No. JBE 16-67, signed September 12, 2016, transferred to the Commissioner of Insurance limited authority to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning the cancellation, termination, nonrenewal and/or reinstatement provisions of Title 22;

WHEREAS, thousands of Louisiana citizens have suffered damage to their residential, commercial residential or commercial property due to the historic flooding, and many such properties have been severely damaged or destroyed;

WHEREAS, insurers have been working diligently to adjust and pay claims, however, due to a shortage in building materials, contractors, construction workers or delays in claim payments, many policyholders will be unable to repair and/or reconstruct their residential, commercial residential or commercial property within typical time frames;

WHEREAS, the extended time period to repair and/or reconstruct residential, commercial residential or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential or commercial property insurance for residential property or commercial property and has created an immediate threat to the public health, safety and welfare of Louisiana citizens; and

WHEREAS, the Commissioner has requested and deemed it necessary to extend the time period for which he is extended the authority to suspend provisions of any

regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning the cancellation, termination, nonrenewal and/or reinstatement provisions of Title 22 due to the continued impact of the flooding.

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: Section 3 of Executive Order JBE 2016-58, signed August 17, 2016, shall be amended as follows:

This Order shall apply retroactively from Friday, August 12, 2016, and shall continue through Thursday, February 9, 2017, unless amended, terminated, or rescinded by the Governor prior thereto.

SECTION 2: All other paragraphs, subsections, and sections of Executive Order JBE 2016-58 shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue in effect through Thursday, February 9, 2017, unless amended, terminated, or rescinded by the Governor prior thereto.

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 11th day of October, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1611#080

EXECUTIVE ORDER JBE 16-72

Flags at Half-Staff—Representative Forrest Dunn, Jr.

WHEREAS, former State Representative Forrest Dunn, Jr. died on October 15, 2016;

WHEREAS, besides serving three terms as a state legislator, his life reflects a thoughtful commitment to public service: at the age of 15, he joined the United States Navy; he co-founded H.A.P. House for the severely handicapped, housed at Barksdale Air Force Base; and was elected to serve as a member of the Caddo Parish School Board;

WHEREAS, Representative Dunn was elected to represent the citizens of District 3 in the Louisiana House of Representatives from 1972 until 1984, effectively relying upon his reputation as a widely respected and admired legislator to serve his constituency in Caddo Parish and the citizens of the State of Louisiana in an honorable and dedicated manner;

WHEREAS, known for bringing his time, energy and passion to any effort he was involved in, Representative Dunn served on the House committees on commerce, education, retirement, and ways and means; served as President of the Holiday in Dixie and the Louisiana State Fair Executive Committee; and served as a member and chairman of multiple other civic groups;

WHEREAS, Representative Dunn received several awards and honors for his work, a few of which include the Special Humanitarian Award of the Community Council in 1978 and recognition as an outstanding leader in the Shreveport-Bossier community in 2002;

WHEREAS, Representative Dunn's life was committed to public service for the benefit of the State of Louisiana and its citizens, and he will be remembered as a gentleman and an inspiration for affecting positive change.

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 Forrest Dunn, Jr., the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol on Friday, October 21, 2016.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, October 21, 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 20th day of October, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1611#081

EXECUTIVE ORDER JBE 16-73

Amended and Restated Conditions for Participation
in the Industrial Tax Exemption Program

WHEREAS, Article 7, Section 21(F) of the Louisiana Constitution provides that the State Board of Commerce and Industry "with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state";

WHEREAS, Article 7, Section 21(F) also provides that the contracts for the exemption "shall be for an initial term of no more than five calendar years and may be renewed for an additional five years";

WHEREAS, under past practices of the Board of Commerce and Industry and previous governors of Louisiana, this has resulted in a 100 percent exemption or abatement from local property taxes for an initial period of five years, plus the opportunity for a five-year renewal, for a total of ten years of full exemption from local property taxes for qualifying manufacturing establishments;

WHEREAS, under past practices of the Board of Commerce and Industry and previous governors of Louisiana, exemption contracts, unlike those in most states, have allowed ad valorem tax exemptions for maintenance

capital, environmental capital upgrades, and new replacements to existing machinery with the result that the same components of a manufacturing plant remain exempt from the local property taxes for years after the expiration of the ten-year period for the contract;

WHEREAS, under past practices the Board of Commerce and Industry and previous governors of Louisiana, exemption contracts have been allowed for Miscellaneous Capital Additions without requiring these projects to file advance notifications, which may more accurately identify projects that will provide for the goals of economic development;

WHEREAS, under past practices of the Board of Commerce and Industry and previous governors of Louisiana, there have been no job creation or capital investment thresholds required for eligibility for the program;

WHEREAS, further, receipt of other incentives from the State by way of direct funding, rebates, tax credits, industrial bonds, or other similar incentives has not factored into determinations of the Board or Governor for eligibility or extent of the exemption or for the length of the contract for the exemption despite the discretionary provisions granted in Article 7, Section 21(F);

WHEREAS, the Board of Commerce and Industry and previous governors of Louisiana have approved Industrial Tax Exemption contracts that and will result in an average of \$1.4 billion in foregone ad valorem tax revenue each year for the next five years for parishes, municipalities, school districts and other political subdivisions of the state directly providing law enforcement, water and sewage, infrastructure, and educational opportunities to Louisiana citizens;

WHEREAS, Louisiana's adjacent states authorize local governments to grant discretionary exemptions based on the attractiveness of a particular project—in contrast with Louisiana where neither the Board of Commerce and Industry or previous administrations have, in the past, exercised discretion in awarding the Industrial Tax Credit Exemption authorized by the Louisiana Constitution;

WHEREAS, as a result, Louisiana has forgone opportunities to negotiate and/or to offer prospects lesser or greater benefits under the Industrial Tax Exemption program based upon the merit of the project being considered; and

WHEREAS, this practice has put Louisiana at a competitive disadvantage with neighboring states which use discretion in granting tax exemptions and thereby forgo less revenue by denying projects that will not create significant employment or sufficient capital investment.

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: This order provides the terms and conditions under which the Governor is to determine that contracts for the Industrial Tax Exemption Program are in the best interests of the State of Louisiana in accordance with Article 7, Section 21(F) of the Louisiana Constitution.

SECTION 2: For all pending contractual applications for which no advance notification is required under the Rules of the Board of Commerce and Industry, except for such contracts that provide for new jobs at the completed

manufacturing plants or establishments, this order is effective immediately; for all contracts for which advance notification is required under the Rules of the Board of Commerce and Industry, this order is effective for advance notifications filed after June 24, 2016. The requirements of this Executive Order do not apply to Industrial Tax Exemptions approved before June 24, 2016 or the renewal of those contracts. However, nothing in this Executive Order shall be interpreted to relieve any participants in the Industrial Tax Exemption Program from their contractual obligations.

SECTION 3: Only contracts accompanied by advance notifications will be considered by the Governor. Applications for miscellaneous capital additions and applications for tax exemptions for maintenance capital, required environmental capital upgrades, and new replacements for existing machinery will not be approved or issued contracts by the Governor.

SECTION 4: The Governor will not approve contracts unless the Board of Commerce and Industry has specifically determined that the establishment meets the constitutional definition of manufacturing. Exemption contracts for new manufacturing plants or establishments are favored by the Governor and exemption contracts for additions to any existing plant or establishment are not favored by the Governor unless they provide for new jobs or present compelling reasons for the retention of existing jobs.

SECTION 5: All contracts providing for the Industrial Tax Exemption shall include Exhibit "A" consisting of a Cooperative Endeavor Agreement between the State of Louisiana, the Louisiana Department of Economic Development, and the Applicant providing for the creation or retention of jobs and provisions for the exercise of the options in the Louisiana Constitution for the term or percentage of the exemption granted in the contract, and for the reduction or loss of the exemption based upon the applicant's compliance with the contract, provided with respect to the manufacturing project for which the exemption is granted will be approved by the Governor.

SECTION 6: All Contracts providing for the Industrial Tax exemption shall also include Exhibit "B" consisting of approvals of the relevant governing Parish Council or Police Jury by resolution, Municipal Council by resolution, School Board by resolution and Sheriff by resolution signifying whether each of those authorities is in favor of the project. The Secretary of Economic Development will provide guidance to the local parties to Exhibit "B" as to the suggested alternatives for their consideration including parameters for job creation, payroll, percentages of exemption, and length of contract.

SECTION 7: Only contracts including Exhibit "A" and Exhibit "B" as described herein will be approved by the Governor. Contracts for the Industrial Tax Exemption that do not meet these conditions will not be approved by the Governor. The Board of Commerce and Industry may address, by rule, any other contractual arrangements that it deems necessary and submit these to the Governor for consideration as amendments to this Executive Order.

SECTION 8: The Department of Revenue shall, in coordination with the Louisiana Department of Economic Development, implement procedures and shall annually review all contracts subject to this Executive Order to assure

compliance with existing law, this Order, and the terms of the Industrial Tax Exemption contract.

SECTION 9: Article 7 Section 21(F) provides for an initial term for the contract of exemption to be “no more than five years” and that “the contract may be renewed for an additional five years”; and in determining whether to sign the initial contract or to renew an existing contract, the Board of Commerce and Industry and the Governor will consider the information collected and the provisions and conditions presented in Exhibits “A” and “B”. In considering new contracts for approval the Governor will only approve those contracts having an initial term of five years or less and providing for an exemption of up to 100% of the manufacturing establishment. If renewal terms are provided for in the new contract, then the renewal contract will only be approved if the renewal term is limited to three years or less and provides for an exemption of up to 80% or less of the manufacturing establishment.

SECTION 10: The terms for the Governor’s approval of the contracts for the Industrial Tax Exemption as provided

for in this Executive Order represent the primary cause for the Governor’s execution of the contracts and any occurrence which operates to change or suspend the terms of any contract approved by the Board of Commerce and Industry and executed by the Governor after the effective date of this Executive Order shall render the approval of the Governor of the affected contract void and of no force or effect.

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 21st day of October, 2016.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1611#082

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office Agricultural and Environmental Sciences

Citrus Canker Disease Quarantine (LAC 7:XV.127)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority of the state entomologist in R.S. 3:1652, notice is hereby given that Department of Agriculture and Forestry is adopting these emergency regulations establishing a quarantine for citrus canker disease ("CC") caused by the bacterial pathogens *Xanthomonas axonopodis* pv. citri and *Xanthomonas axonopodis* pv. aurantifolii. The state entomologist has determined that CC has been found in this state and may be prevented, controlled, or eradicated by quarantine.

CC poses an imminent peril to the health and welfare of the Louisiana commercial citrus industry due to its ability to infest rutaceous plants. This industry has a farm value of \$2,400,000-\$5,000,000 million in southeastern Louisiana in the form of citrus nursery stock, and \$5,100,000 million in the form of commercial citrus fruit in the state. CC causes premature leaf and fruit drop, twig dieback and tree decline in citrus trees and is spread by wind-driven rain or through the movement of infected plants. Failure to prevent, control, or eradicate this pest threatens to destroy Louisiana's commercial citrus industry and the growing and harvesting of citrus by citizens of Louisiana for their own private use.

Louisiana's commercial citrus industry adds \$7,500,000-\$10,000,000 to the state's agriculture economy each year. Sales of citrus trees and plants by nursery stock dealers to private individuals also are important to the state's economy. The loss of the state's commercial citrus industry and privately owned citrus trees and fruit would be devastating to the state's economy and to its private citizens. The quarantine established by this emergency regulation is necessary to prevent the spread of CC in Louisiana outside of the current areas where this disease has already been found.

For these reasons, the outbreak CC in Louisiana presents an imminent peril to the health, safety and welfare of Louisiana's citizens and the state's commercial and private citrus industry. As a result of this imminent peril, the Department of Agriculture and Forestry hereby exercises its full and plenary power pursuant to R.S. 3:1652 to deal with crop and fruit pests and contagious and infectious crop and fruit diseases by imposing the quarantines set out in these emergency regulations.

This Rule shall have the force and effect of law October 25, 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 XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Subchapter B. Nursery Stock Quarantines

§127. Citrus Nursery Stock, Scions and Budwood

A. - E.3.d.iii.(b). ...

F. Citrus Canker Disease Quarantine

1. The department issues the following quarantine because the state entomologist has determined that citrus canker disease (CC), caused by the bacterial pathogen *Xanthomonas axonopodis* pv. citri (Xac A, A* and AW) with synonyms *X. citri* pv. citri, or *X. citri* subsp. citri or *X. campestris* pv. citri or *X. smithii* subsp. citri; and *X. axonopodis* pv. aurantifolii (Xac B and C) with a synonym *X. fuscans* subsp. aurantifolii, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. No regulated materials as defined in this Subsection shall be moved out of any area of this state that is listed in this Subsection as a quarantined area for CC, except as provided in this Subsection.

3. Any person violating this quarantine shall be subject to imposition of the remedies and penalties provided for in R.S. 3:1653 for any violation of this quarantine.

4. Quarantined areas in this state include:

a. the entire parishes of Orleans, St. Bernard and Plaquemines;

b. the portions of Jefferson and St. Charles Parishes bounded by a line beginning at the intersection of Jefferson, Plaquemines and Orleans parish lines located at GPS coordinates 29.895497, -90.008050 then moving southwest along the Jefferson parish line to the intracoastal waterway west closure complex; then moving west-southwest along an imaginary line that intersects with the St. Charles/Jefferson Parish line running through Lake Salvador; then moving northwest, following the St. Charles/Jefferson Parish line to the intersection of the parish line with Highway 18; then moving southwest following Highway 18 (River Road) to the intersection of Interstate Highway 310; then moving south following I-310 until it reaches the intersection of I-310 and Hwy 3127; then moving north following 3127 to the intersection of Hwy 3127 and Hwy 3142; then moving north following 3142 to the intersection of Hwy 3142 and the West Mississippi River Levee; then moving south following the West Mississippi River Levee to the GPS coordinates 29.957078, -90.402763; then moving east along an imaginary line which crosses the Mississippi River and runs into Ormand Blvd.; the line continues northeast along Ormand Blvd until it intersects US 61; then moving southeast following US 61 until it intersects I-310; then moving north following Interstate Highway 310 to the Interstate Highway 310/Interstate Highway 10 interchange; then moving east following Interstate Highway 10 to its

intersection with the Jefferson Parish line; then moving north following the Jefferson Parish line until reaching the south shoreline of Lake Ponchartrain; then moving east following the south shoreline of Lake Ponchartrain until its intersection with the Orleans Parish line; then moving south following the Jefferson/Orleans Parish line and following said parish line to the point of beginning located at 29.895497, -90.00805;

c. that portion of Lafourche Parish bounded by a line beginning at the intersection of Highway 90 and Highway 1, then moving southwest on Highway 90 where it intersects Bayou Folse; then moving northwest along Bayou Folse to GPS coordinates 29.709562, -90.632235, then moving north, northeast along an imaginary line until it intersects Highway 1, then moving southeast on Highway 1 until it reaches the point of beginning;

d. a declaration of quarantine for CC covering any other specific parishes or areas of this state shall be published in the official journal of the state and in the *Louisiana Register*.

5. - 6.i.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 40:1308 (July 2014), LR 42:730 (May 2016), LR 42:

Mike Strain DVM
Commissioner

1611#004

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Emerald Ash Borer Quarantine (LAC 7:XV.167)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and the authority of the state entomologist pursuant to R.S. 3:1652, and in order to avoid a lapse in coverage until a permanent rule is in effect, notice is hereby given that Department of Agriculture and Forestry is adopting these emergency regulations establishing a quarantine in Lincoln Parish and renewing a quarantine already in effect in Union Parish for the following pest: emerald ash borer (“EAB”), *Agilus planipennis* Fairmaire. The state entomologist has determined that EAB has been found in Union and Lincoln Parishes and may be prevented, controlled, or eradicated by quarantine.

EAB poses an imminent peril to the health and welfare of Louisiana forests, commercial and private forestry/wood product industries, and nursery growers due to its ability to infest ash trees. In 2013, the wholesale value of woody ornamental sales for nursery growers in the state was \$62.6 million, a portion of which is comprised of sales of ash trees (Louisiana State University AgCenter 2013 Louisiana Summary, Agriculture and Natural Resources). Louisiana’s

forests and forestry/wood products industries generated an output industry production value of \$10.86 billion in 2012, a portion of which is comprised of ash trees and ash tree products (Louisiana State University AgCenter publication 3367-G, 2015). Sales of ash firewood by retail and wholesale suppliers to private individuals also are important to the state’s economy.

Natural spread of EAB is limited to relatively short distances. However, without restriction, EAB can spread through human-assisted means over long distances via infested ash nursery stock, ash logs/timber and cut firewood. Once an ash tree is infested, it experiences twig dieback and tree decline. Tree death occurs within a few years. Failure to prevent, control, or eradicate this pest threatens to damage Louisiana’s commercial ash tree nursery industry, and over time this pest poses a threat to destroy the majority of ash in our state, both commercial and residential. The loss of the state’s commercial nursery-grown ash trees, forestry/wood ash products and even residential ash trees would be devastating to the state’s economy and to its private citizens. The quarantine established by this emergency regulation is necessary to prevent the spread of EAB to all areas in Louisiana where ash may exist, outside of the current areas where this pest has been found.

For these reasons, the presence of EAB in Louisiana presents an imminent peril to the health, safety and welfare of Louisiana’s citizens and forests, the state’s commercial and private forestry/wood product industries, and nursery growers. As a result of this imminent peril, the Department of Agriculture and Forestry, Office of Forestry and Office of Agricultural and Environmental Sciences, hereby exercises its full and plenary power pursuant to R.S. 3:1652 to deal with crop and fruit pests and contagious and infectious crop and fruit diseases by imposing the quarantines set out in these emergency regulations.

This Rule shall have the force and effect of law effective October 13, 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 XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Subchapter F. Emerald Ash Borer Quarantine

§167. Emerald Ash Borer Quarantine

A. The department issues the following quarantine because the state entomologist has determined that the insect Emerald Ash Borer (“EAB”), *Agilus planipennis*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

B. Quarantined areas in this state include:

1. The entire parishes of Bossier, Claiborne, Lincoln, Union and Webster.

2. A declaration of quarantine for EAB covering any other specific parishes or areas of this state shall be published in the official journal of the state and in the *Louisiana Register*.

C. No regulated articles as defined in this Subsection shall be moved out of any area of this state that is listed in

this subsection as a quarantined area for EAB, except as provided in this subsection.

D. The following articles are hosts of EAB and are deemed to be regulated articles for purposes of this subsection:

1. The emerald ash borer in all of its life stages; firewood of all hardwood (non-coniferous) species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

2. Any other article, product, or means of conveyance not listed in Subparagraph 4.a of this Section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

E. Regulated articles may be moved from quarantined areas to non-quarantined areas within or outside of Louisiana only if moved under the following conditions:

1. The regulated articles being moved are accompanied by a certificate or limited permit issued by LDAF and attached in accordance with the EAB federal requirements.

2. The regulated articles being moved are not accompanied by a certificate or limited permit but are being moved by the United States Department of Agriculture for experimental or scientific purposes;

3. The regulated articles being moved are not accompanied by a certificate or limited permit but originated outside of any EAB quarantined area and are moved interstate through the quarantined area under the following conditions:

a. The points of origin and destination are indicated on a waybill accompanying the regulated article; and

b. The regulated article, if moved through the quarantined area, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and

c. The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

d. The article has not been combined or commingled with other articles so as to lose its individual identity.

F. Persons or businesses engaged in growing, handling, or moving regulated articles intrastate may enter into a compliance agreement with LDAF if such persons or businesses review with an LDAF inspector each provision of the compliance agreement. Any person or business who enters into a compliance agreement with LDAF must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

1. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the

cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to LDAF within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants LDAF to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by LDAF. As soon as practicable, LDAF will grant or deny the appeal, in writing, stating the reasons for the decision.

G. Any person violating this quarantine shall be subject to imposition of the remedies and penalties set forth in R.S. 3:1653.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652, 3:1653.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 41:2577 (December 2015), amended LR 42:

Mike Strain DVM
Commissioner

1610#003

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 declaration is necessary to extend the original Emergency Rule since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. This Emergency Rule extension is effective on November 28, 2016 and will remain in effect until the Final Rule becomes effective.

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.DCFS.louisiana.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 R.S. 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 10 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 and 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 a 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 1 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 DCFCS, 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 DCFCS; 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 RS 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.

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

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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. one hour for a resident under nine years old; or
- b. two 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.

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 36:819 (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:

§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 forced 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. e 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 barbeques 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 firefighting 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

1611#015

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs (LAC 28:XLV.Chapter 7)

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 revisions to *Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs*: §741. Introduction, §743. Minimum Requirements for Traditional Teacher Preparation Programs, and §745. Minimum Requirements for Alternate Teacher Preparation Programs. This Declaration of Emergency, effective October 12, 2016, is for a period of 120 days from adoption, or until finally adopted as Rule.

R.S. 17:7.2 requires BESE to establish qualifications and requirements for the approval of teacher education programs that result in eligibility for certification, subject to the constitutional power and authority of the Board of Regents (BoR) and university system supervisory boards.

Pursuant to the Declaration of Emergency, the proposed revisions to Bulletin 996 establish competency-based program design and practice requirements that take full effect beginning January 1, 2017, which is why BESE has exercised the emergency provision in the adoption of these policy revisions.

Title 28 EDUCATION

Part XLV. Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs Chapter 7. Louisiana State Standards for Educator Preparation Programs Subchapter C. Teacher Preparation Programs: Adopted October 2016

§741. Introduction

A. Effective January 1, 2017, for the purposes of program approval, teacher preparation programs shall meet the requirements described in this subchapter.

B. Current approved preparation providers must demonstrate alignment of approved traditional and alternate programs to the program requirements described in this subchapter and be approved by BESE before July 1, 2018.

C. After July 1, 2018, teacher candidates shall be admitted only to traditional and alternate teacher preparation programs that meet the requirements described in this subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:

§743. Minimum Requirements for Traditional Teacher Preparation Programs

A. A traditional teacher preparation program is a baccalaureate degree program that includes a minimum of 120 credit hours of coursework and required practice experiences. A portion of the total hours must include the minimum number of credit hours in the teaching of reading and literacy as follows.

1. For certification in Birth-K, PK-3 and 1-5, general-special education mild/moderate 1-5, 9 credit hours;

2. For certification in middle grades 4-8 or general-special education mild/moderate 4-8, 6 credit hours;

3. For certification in secondary 6-12, all-level K-12, or general-special education mild/moderate 6-12 programs, 3 credit hours; and

4. For special education areas (early interventionist, hearing impaired, significant disabilities, or visually impaired), 9 credit hours.

B. The program shall sequentially develop and assess teacher candidates' mastery of applicable Louisiana teacher preparation competencies codified in *Bulletin 746* through a combination of general education, content area, and teaching coursework, assessments, and related practice experiences.

1. Traditional teacher preparation programs offered by public universities shall meet general education requirements established by the Board of Regents.

2. For the purposes of program approval, an academic major in the certification content area may serve as the basis for alignment to content knowledge competencies.

C. Programs shall include the following practice experiences, which directly align with and sequentially develop the competencies identified in *Bulletin 746*.

1. Actual practice experiences shall be provided in classroom settings prior to the residency year; and

2. A one-year residency shall take place in a public or approved non-public school in a classroom in the certification area with a teacher of record who holds a valid Level 1, 2, 3, Type A, or Type B teaching certificate in the area for which the candidate is pursuing certification pursuant to Bulletin 746. The residency may include practice with other teachers in a public or approved non-public school setting. Residents placed in charter schools must be placed with a teacher of record who has demonstrated effectiveness pursuant to state law and Bulletin 130.

a. Beginning July 1, 2018, candidates must hold a valid resident teacher certificate in order to be placed in a one-year residency.

b. For certification in B-K, PK-3, 1-5, or 1-5 integrated to merged, candidates must spend a minimum of 80 percent of the residency school site's instructional time each week engaged in residency activities.

c. For certification in K-12, 4-8, 6-12, 4-8 integrated to merged or 6-12 integrated to merged, candidates must spend a minimum of 60 percent of the residency school site's instructional time each week in the first semester and 80 percent of the residency school site's instructional time each week in the second semester engaged in residency activities.

d. Teacher preparation providers may seek approval to offer an innovative residency model that does not meet the minimum instructional time requirements but meets a specific workforce need and includes high-quality clinical experiences throughout the program and intensive clinical experiences throughout the residency year.

3. The residency shall include a combination of the following experiences:

a. instructional goal-setting and planning, including individual education plan (IEP) and individual accommodations plan (IAP) review and implementation;

b. classroom teaching;

c. analysis of student assessment results, including formative and summative assessment data, student work samples, and observations of student class discussions;

d. parent-teacher conferences and communication; and

e. interactions and collaboration with other teachers.

4. The teacher candidate shall be supervised in all residency experiences by a team comprised of a school-based mentor teacher, the residency school site principal or designee, and program faculty member. The supervision shall include, at minimum, two formal observations of teaching practice per semester, which shall include feedback on performance and analysis of formative and summative student achievement results and candidate performance data. Observations may be conducted by any member of the supervision team.

5. Candidates may complete clinical experiences through general education or content courses that integrate content, pedagogy, and practice.

D. The preparation provider shall assess and document evidence of candidates' teaching competency for all candidates completing one-year residencies.

1. Assessments of teaching competency shall be jointly administered by the preparation provider and the residency school site principal or designee.

2. Assessments of teaching competency shall include, but not are not limited to, the following:

a. observations that occur during the residency year; and

b. measures of teacher candidates' impact on all students' learning, which may include student learning targets.

3. Upon completion of the program, a holistic evaluation of the teacher candidate's eligibility for initial licensure shall be made collaboratively by preparation provider faculty, the residency school site principal or designee, and mentor teacher.

E. To be admitted into a traditional teacher preparation program, candidates must meet the following requirements:

1. Meet minimum GPA requirements of 2.50 or higher grade point average (GPA) on a 4.00 scale; and

2. Pass the Core Academic Skills for Educators assessment or meet alternate requirements pursuant to Bulletin 746.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:

§745. Minimum Requirements for Alternate Teacher Preparation Programs

A. An alternate teacher preparation program is a program that includes a minimum number of credit or contact hours of coursework or training and required practice experiences. There are three types of alternate teacher preparation programs:

1. The practitioner teacher program may be offered by state-approved colleges or universities and non-university providers with an approved teacher education program in grades PK-3, 1-5, 4-8, 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), or integrated to merged approach for grades 1-5, grades 4-8 and grades 6-12.

a. Total hours required in grades PK-3 program—24-33 credit hours (or equivalent 360-495 contact hours);

b. Total hours required in grades 1-5, 4-8, 6-12, all-level (K-12) programs—21-30 credit hours (or equivalent 315-450 contact hours); and

c. Total hours required in general-special education mild/moderate grades 1-5, grades 4-8, and grades 6-12 programs—27-33 credit hours (or equivalent 405-495 contact hours).

2. The master's degree program may be offered by state-approved colleges or universities with an approved teacher education program. Master's degree programs may offer certification in grades PK-3, 1-5, 4-8, 6-12, all-level K-12 (art, dance, foreign language, health and physical education, music), early interventionist birth to five years, general-special education mild/moderate: an integrated to merged approach for grades 1-5, grades 4-8, and grades 6-12.

a. Total hours required in grades PK-3, grades 1-5, grades 4-8, grades 6-12, All-Level K-12, Early Interventionist Birth to Five Years programs—33-39 credit hours; and

b. Total hours required in general-special education mild/moderate: an integrated to merged approach for grades

1-5, grades 4-8 and grades 6-12 programs – 33-42 credit hours.

3. The certification-only program may be offered by state-approved providers with an approved teacher education program in grades PK-3, 1-5, 4-8, 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), early interventionist birth to five years, general-special education mild-moderate: an integrated to merged approach for grades 1-5, grades 4-8, and grades 6-12. Total hours required—27-33 credit hours or equivalent contact hours (405-495).

B. For all alternate teacher preparation programs, a portion of the total hours must include the minimum number of credit hours or equivalent contact hours in the teaching of reading and literacy as follows.

1. For certification in PK-3 and 1-5, general-special education mild/moderate 1-5, 9 credit hours or 135 contact hours;

2. For certification in middle grades 4-8 or general-special education mild/moderate 4-8, 6 credit hours or 90 contact hours;

3. For certification in secondary 6-12, all-level K-12, or general-special education mild/moderate 6-12 programs, 3 credit hours or 45 contact hours; and

4. For special education areas (early interventionist, hearing impaired, significant disabilities, or visually impaired), 9 credit hours or 135 contact hours.

C. The program shall sequentially develop and assess teacher candidates' mastery of applicable Louisiana teacher preparation competencies codified in Bulletin 746 through a combination of coursework, assessments, and related practice experiences.

D. Programs shall include the following practice experiences, which directly align with and sequentially develop the competencies identified in Bulletin 746.

1. Clinical experiences shall be provided in classroom settings prior to the residency year as follows:

a. In all programs, a minimum of 9 credit hours or 135 contact hours of training and a minimum of 80 hours of actual practice experiences in classrooms is required prior to the residency.

2. A one-year residency shall take place in a public or approved non-public school in a classroom in the certification area. The residency shall include a combination of the following experiences:

a. instructional goal-setting and planning, including IEP and IAP review and implementation;

b. classroom teaching;

c. analysis of student assessment results, including formative and summative assessment data, student work samples, and observations of student class discussions;

d. parent-teacher conferences and communication; and

e. interactions and collaboration with other teachers.

3. The teacher candidate shall be supervised in all residency experiences by a team comprised of a school-based mentor teacher, the residency school site principal or designee, and program faculty member.

a. The supervision shall include, at minimum, two formal observations of teaching practice per semester, which shall include feedback on performance and analysis of

formative and summative student achievement results and candidate performance data. Observations may be conducted by any member of the supervision team.

4. Practitioner teacher programs shall require candidates to complete the residency as a teacher of record. Candidates must hold a valid practitioner teacher license pursuant to Bulletin 746.

5. Master's degree or certification-only alternate programs shall allow candidates to complete the residency as a teacher of record or in a classroom under a teacher of record.

a. Candidates may complete the residency as a teacher of record and must hold a valid Practitioner Teacher License pursuant to Bulletin 746; or

b. Candidates may complete the one-year residency in a classroom a public or approved non-public school in a classroom in the certification area with a teacher of record who holds a valid Level 1, 2, 3, Type A, or Type B teaching certificate in the area for which the candidate is pursuing certification pursuant to Bulletin 746. The residency may include practice with other teachers in a public or approved non-public school setting. Residents placed in charter schools must be placed with a teacher of record who has demonstrated effectiveness pursuant to state law and Bulletin 130.

i. Effective July 1, 2018, candidates must hold a valid Resident Teacher Certificate. The residency may include practice with other teachers in the public or approved non-public school setting.

ii. For certification in PK-3, 1-5, or 1-5 integrated to merged, candidates must spend a minimum of 80 percent of the residency school site's instructional time each week engaged in residency activities; and

iii. For certification in K-12, 4-8, 6-12, 4-8 integrated to merged or 6-12 integrated to merged, candidates must spend a minimum of 60 percent of the residency school site's instructional time each week in the first semester and 80 percent of the residency school site's instructional time each week in the second semester engaged in residency activities.

iv. Teacher preparation providers may seek approval to offer an innovative residency model that does not meet the minimum instructional time requirements but meets a specific workforce need and includes high-quality clinical experiences throughout the program and intensive clinical experiences throughout the residency year.

E. The preparation provider shall assess and document evidence of candidates' teaching competency for all candidates completing one-year residencies.

1. Assessments of teaching competency shall be jointly administered by the preparation provider and the residency school site principal or designee.

2. Assessments of teaching competency shall include, but not are not limited to, the following:

a. observations that occur during the residency year; and

b. measures of teacher candidates' impact on all students' learning, which may include student learning targets.

3. Upon completion of the program, a holistic evaluation of the teacher candidate's eligibility for initial licensure shall be made collaboratively by preparation

provider faculty, the residency school site principal or designee, and mentor teacher.

F. To be admitted into an alternate teacher preparation program, candidates must meet the following requirements:

1. Possess a non-education baccalaureate degree from a regionally accredited university;

2. Meet minimum GPA requirements. For admission into certification-only programs, the GPA may be calculated using the last 60 hours of coursework earned from a regionally accredited university.

a. 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a non-university program;

b. 2.20 or higher GPA on a 4.00 scale to enter a college or university program; and

3. Pass the core academic skills for educators assessment and the required content examinations or meet alternate requirements pursuant to Bulletin 746. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 30 semester hours of coursework specific to the content area.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:

James D. Garvey, Jr.
President

1611#002

DECLARATION OF EMERGENCY

Office of the Governor

Board of Examiners of Certified Shorthand Reporters

Applications for Examinations (LAC 46:XXI.301)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S.49:953(B), and under the authority of R.S. 37:2557(B), R.S. 37:2555(G), and R.S. 37:2556(D), the Louisiana Board of Examiners of Certified Shorthand Reporters (“CSR board”) declares an emergency and adopts by emergency process the attached rules and accompanying forms as LAC 46:I.301, proposes to adopt changes made to CDR examination procedures.

This Emergency Rule is effective on November 1, 2016 and shall remain in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever comes first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 3. Examinations

§301. Applications for Examinations

A. - F. ...

G. A certified digital reporter (CDR) applicant who is eligible as an official or deputy official reporter will be scheduled for an examination to be given by a designee of the education or examination committee chair. The examination will not be administered for an individual CDR applicant more frequently on an annual basis than the number of examinations scheduled each year by the board in accordance with Subsection A of this Section. A certified

digital reporter applicant is not subject to the qualifying exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2555(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:393 (May 1990), LR 17:578 (June 1991), LR 19:1537 (December 1993), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1086 (July 2003), LR 35:64 (January 2009), LR 37:3512 (December 2011), LR 42:

Judge Paul A. Bonin
Chairman

1611#016

DECLARATION OF EMERGENCY

Department of Health

Board of Examiners of Nursing Facility Administrators

Registration of Licenses and Certificates (LAC 46:XLIX.1103)

The Board of Examiners of Nursing Facility Administrators has exercised the emergency provision in accordance with R.S. 49:953(B), to amend its rules governing the qualifications required to obtain a conditional licensed administrator status. The board received input from a number of licensed administrators that currently do not meet the requirements for conditional licensure and who will not be able to renew their administrator license with the current active status due to financial restraints. To eliminate some of the financial restraints and allow these administrators to keep their license current, and since there is not sufficient time to promulgate a change in the rule before the current December 31, 2016 lapse date, the board has determined that an Emergency Rule is necessary.

The board has determined that failure to implement the Emergency Rule will cause a decrease in the number of licensed administrators in Louisiana. The board has determined this emergency rule is necessary to prevent imminent peril to the public health, safety, and welfare. Although the board is working on the changes, they need more time; therefore, they have directed the Emergency Rule. The Rule shall become effective 10/17/2016 and 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 XLIX. Board of Examiners of Nursing Facility Administrators

Chapter 11. Licenses

§1103. Registration of Licenses and Certificates; Status

A. - A.3. ...

B. Every person who holds a valid license as a nursing facility administrator as issued by the board in registered active status and has been issued a certificate of registration may elect to go to registered inactive status which is defined

as one who is no longer practicing and elects not to maintain continuing education hours.

1. In such case, to change from a registered inactive status to registered active status, they shall undergo 60 days of on-site re-orientation under supervision of a board-approved preceptor, unless such person has been actively practicing in another state and meets Louisiana continuing education and all board requirements.

C. Upon making an application for a new certificate of registration as either a registered active or registered inactive status, such licensee shall pay an annual registration fee as provided for in Chapter 12 of this Part. Additionally, for a registered active administrator, they shall submit evidence satisfactory to the board that, during the annual period immediately preceding such application for registration, they have attended a continuing education program or course of study as provided in Chapter 9 of these rules and regulations. Unless prior approval is obtained, originals of the certificate(s) of attendance for 18 hours of approved continuing education shall be attached to the annual re-registration application of which no more than 9 hours may be online.

D.1. A licensed nursing home administrator In registered active status no longer practicing in Louisiana may place his license in either a conditional inactive or conditional active status.

2.a. As used in this Subparagraph, a licensed nursing home administrator selecting conditional inactive status shall mean the following:

- i. an administrator not actively running a nursing facility; and
- ii. not maintaining continuing education requirements for re-registration.

b. As used in this Subparagraph, a licensed nursing home administrator selecting conditional active status shall mean one of the following:

- i. an administrator not actively running a nursing facility and age 65 or older;
- ii. an administrator with 20 years of experience as an administrator running a nursing facility and not currently actively working in a nursing facility;
- iii. an administrator not actively working in a nursing facility in Louisiana and possessing an active license in another state.

3.a. A licensed nursing home administrator who selects conditional inactive status or conditional active status shall continue to register their license annually as provided in Chapter 12 of this Part. Additionally, for a conditional active status, they shall submit evidence satisfactory to the board that, during the annual period immediately preceding such application for registration, they have attended a continuing education program or course of study as provided in Chapter 9 of these rules and regulations.

b. A person selecting conditional inactive status is exempt from continuing education requirements. Should a licensee wish to reactivate to registered active status, they shall undergo 60 days of on-site re-orientation under supervision of a board-approved preceptor, unless such

person has been actively practicing in another state and meets Louisiana continuing education requirements.

c. In either case, to change from a conditional active or conditional inactive status to registered active status an applicant must meet all fees and requirements for licensure of a nursing home administrator license.

4. The annual conditional licensure fee shall be assessed as provided for in Chapter 12 of this Part.

E. Upon receipt of such application for registration, the registration fee and the evidence required with respect to continuing education, the board shall issue a certificate of registration to such nursing home administrator.

F. The license of a nursing home administrator who fails to comply with the provisions of this Section shall be suspended by the board and the license shall automatically lapse.

G. Only an individual who has qualified as a licensed and registered nursing home administrator and who holds a valid current registration certificate pursuant to the provisions of these rules for the current annual registration period, shall have the right and the privilege of using the title "nursing home administrator" and have the right and the privilege of using the abbreviation "NFA." after his name. No other person shall use or shall be designated by such title or such abbreviation or any other words, letters, sign, card, or device tending to, or intended to indicate that such person is a licensed and registered nursing home administrator.

H. The board shall maintain a file on all applicants for licensing and all registered nursing home administrators, which file shall contain the place of residence, name of each applicant; the name and address of current employer or business connection of each applicant; the date of application; complete information of educational and experience qualifications with dates; the license number and registration certificates issued to the applicant; the date on which the board reviewed and acted upon the application; and the board shall maintain a complete file of such other pertinent information as may be deemed necessary.

I. The board shall maintain a register of all licenses and status conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 9:461 (July 1983), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators LR 18:181 (February 1992), amended LR 25:1627 (September 1999), LR 25:2407 (December 1999), repromulgated LR 26:82 (January 2000), LR 26:316 (February 2000), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:594 (February 2011), repromulgated LR 37:887 (March 2011), amended by the Department of Health, Board of Examiners of Nursing Facility Administrators, LR 42:

Mark A. Hebert
Executive Director

1611#005

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Home and Community-Based Services Waivers
Community Choices Waiver
Electronic Visit Verification
(LAC 50:XXI.9305)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt LAC 50:XXI.9305 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, through collaborative efforts, provide enhanced long-term services and supports to individuals who are elderly or have a disability through the Community Choices Waiver program.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which amended the provisions governing the Community Choices Waiver in order to adopt requirements which mandate that providers of personal assistant services must utilize the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking, and billing for certain home and community-based services (*Louisiana Register*, Volume 41, Number 3). This Rule is being promulgated to continue the provisions of the April 1, 2015 Emergency Rule. This action is being taken to promote the health and welfare of Community Choices Waiver participants by assuring that they receive the services they need and to ensure that these services are rendered in an efficient and cost-effective manner.

Effective November 26, 2016, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the Community Choices Waiver to establish requirements for the use of an EVV system.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 93. Provider Responsibilities

§9305. Electronic Visit Verification

A. Effective for dates of service on or after April 1, 2015, Community Choices Waiver providers shall use the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking, and billing for certain home and community-based services.

B. Reimbursement shall only be made to providers with documented use of the EVV system. The services that require use of the EVV system will be published in the Community Choices Waiver provider manual.

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 and the Office of Aging and Adult Services, 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 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

1611#054

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for Persons
with Developmental Disabilities
Licensing Standards
(LAC 48:I.8595 and 8599)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.8595 and §8599 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. 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 repealed the provisions governing the minimum licensing standards for intermediate care facilities I and II, community homes and group homes, and adopted provisions to incorporate these facilities under a single comprehensive Rule for intermediate care facilities for persons with developmental disabilities (ICFs/DD) (*Louisiana Register*, Volume 38, Number 12).

Act 540 of the 2006 Regular Session of the Louisiana Legislature amended R.S. 29:726(F) to provide for rapid communications in times of disaster or emergencies. In compliance with Act 540, the department promulgated an Emergency Rule to amend the provisions governing ICFs/DD to require timely filing of electronic reports related to census information and other needed information during declared disasters or emergencies (*Louisiana Register*, Volume 42, Number 4). This Emergency Rule is being

promulgated to continue the provisions of the April 7, 2016 Emergency Rule.

This action is being taken to prevent imminent peril to the health, safety or welfare of Louisiana citizens who are residents of ICFs/DD.

Effective December 5, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing the licensing standards for intermediate care facilities for persons with developmental disabilities.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 85. Intermediate Care Facilities for Persons with Developmental Disabilities

Subchapter G. Emergency Preparedness

§8595. Emergency Preparedness Plan

A. - B.15.f. ...

C. An ICF/DD shall electronically enter current facility information into the department's ESF-8 Portal or into the current LDH Emergency Preparedness webpage or electronic database for reporting.

1. The following information shall be entered or updated before the fifteenth of each month:

- a. operational status;
- b. census;
- c. emergency contact and destination location information; and
- d. emergency evacuation transportation needs categorized by the following types:

i. *red*—high risk residents who 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; and

iii. *green*—residents who do not need specialized transportation may be transported by car, van, bus or wheelchair accessible transportation.

2. An ICF/DD shall also enter or update the facility's information upon request, or as described per notification of an emergency declared by the secretary. Emergency events may include, but are not limited to:

- a. hurricanes;
- b. floods;
- c. fires;
- d. chemical or biological hazards;
- e. power outages;
- f. tornados;
- g. tropical storms; and
- h. severe weather.

3. Effective immediately, upon notification of an emergency declared by the secretary, all ICFs/DD shall file an electronic report with the ESF-8 Portal or into the current LDH Emergency Preparedness webpage or electronic database for reporting.

a. The electronic report shall be filed, as prescribed by department, 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;
- vi. mobility status of clients;
- vii. range of ages of clients;
- ix. intellectual levels/needs of clients; and
- x. any other client or facility related information

that is requested by the department.

NOTE: The electronic report shall not be used to request resources or to report emergency events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3207 (December 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 42:

§8599. Notification of Evacuation, Relocation, or Temporary Cessation of Operations

A. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operations at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP, the ICF/DD must immediately give notice to the Health Standards Section as well as the Office for Citizens with Developmental Disabilities (OCDD) and OHSEP as directed by filing an electronic report with the ESF-8 Portal or into the current LDH Emergency Preparedness webpage or electronic database for reporting:

A.1. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3208 (December 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

1611#055

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Intellectual Disabilities Supplemental Payments (LAC 50:VII.32917)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:VII.32917 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, Bureau of Health Services Financing provides Medicaid reimbursement to non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for services rendered to Medicaid recipients.

The Department of Health and Hospitals, Bureau of Health Services Financing, promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID in order to adopt provisions to establish supplemental Medicaid payments for services provided to Medicaid recipients residing in privately-owned facilities that enter into a cooperative endeavor agreement with the department (*Louisiana Register*, Volume 41, Number 8). The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the August 1, 2015 Emergency Rule to establish upper payment limits for supplemental payments to private intermediate care facilities entering into a cooperative endeavor agreement with the department to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center, hereafter referred to as Pinecrest (*Louisiana Register*, Volume 42, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2016 Emergency Rule. This action is being taken to secure new federal funding, and to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation.

Effective November 20, 2016, the Department of Health, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state ICFs/ID.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32917. Supplemental Payments

A. Effective for dates of service on or after August 1, 2015, monthly supplemental payments shall be made to qualifying privately-owned intermediate care facilities for persons with intellectual disabilities.

1. In order to qualify for the supplemental payment, the private entity must enter into a cooperative endeavor agreement with the department.

B. Effective for dates of service on or after August 1, 2016, monthly supplemental payments shall be made to qualifying privately-owned intermediate care facilities for persons with intellectual disabilities (ICFs/ID) to provide a privately operated living setting to residents discharging from Pinecrest Supports and Services Center.

1. In order to qualify for the supplemental payment, the private entity must enter into a cooperative endeavor agreement with the department to provide a privately operated living setting, with an end goal of increased community placement opportunities, to residents of Pinecrest who desire to discharge and have been deemed ready for discharge by their interdisciplinary teams, and meet the admission protocol/criteria of the contracted party but have not been successful in securing a placement with a private provider.

C. Supplemental payments for services rendered to Medicaid recipients shall not exceed the facility's upper payment limit (UPL) pursuant to 42 CFR 447.272. The UPL will be based on the Centers for Medicare and Medicaid Services' approved ICF transitional rate of \$329.26 including provider fee.

D. The supplemental payment will be the difference between the actual Medicaid payment and what would have been paid if the ICF/ID was paid up to the UPL amount.

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

1611#056

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services—Long-Term
Standards for Participation
Electronic Visit Verification
(LAC 50:XV.12909)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12909 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, through collaborative efforts, provide enhanced long-term personal care services and supports to individuals with functional impairments.

The department promulgated an Emergency Rule which amended the provisions governing long-term personal care services (LT-PCS) in order to adopt requirements which mandate that LT-PCS providers must utilize the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking, and billing for long-term personal care services (*Louisiana Register*, Volume 41, Number 3). This Emergency Rule is being promulgated to continue the provisions of the April 1, 2015 Emergency Rule.

This action is being taken to promote the health and welfare of persons with a functional impairment by assuring that they receive the services they need, and to ensure that these services are rendered in an efficient and cost-effective manner.

Effective November 26, 2016, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing long-term personal care services to establish requirements for the use of an EVV system.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12909. Standards for Participation

A. - D.2. ...

E. Electronic Visit Verification. Effective for dates of service on or after April, 1, 2015, providers of long-term personal care services shall use the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking, and billing for certain home and community-based services.

1. Reimbursement shall only be made to providers with documented use of the EVV system.

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 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), LR 39:2508 (September 2013), 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

1611#057

DECLARATION OF EMERGENCY

**Department of Insurance
Office of the Commissioner**

Emergency Rule 29—Homeowner and Fire/Commercial
Insurance Policy Disclosure Forms
(LAC 37:XIII.Chapter 153)

The Department of Insurance (Department) hereby exercises the emergency provisions of the Administrative Procedure Act, LSA-R.S. 49:953(B) and, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., adopts Emergency Rule 29 which is necessary to create and promulgate the Homeowner and Fire/Commercial Insurance Policy Disclosure Forms. Emergency Rule 29 establishes the forms developed by the Commissioner of Insurance for use by all property and casualty insurers issuing, delivering or renewing homeowner or fire commercial insurance policies that provide coverage for damage to property in Louisiana. Emergency Rule 29 shall be effective upon adoption in the Louisiana Register and unless extended, shall remain in effect for a period of 120 days or until adoption of the final Regulation 107 through the normal rulemaking process, whichever occurs first.

Emergency action is necessary to provide the forms to be used by all property and casualty insurers issuing homeowners and fire/commercial insurance policies that provide coverage for damage to property in Louisiana to notify all homeowner and fire/commercial policyholders of specific provisions of their policies.

Act 274 of the 2016 Regular Session enacted LSA R.S. 22:1332 (B) (7) which requires the Homeowner Disclosure form mandated by that section to include an additional notice to policyholders if their insurer intends to use claims that do not exceed the policy deductible and that do not result in a payment to the insured or on behalf of the insured

as a basis to increase the cost of the policy's premium in the future or as part of the basis for cancellation of the policy. The Commissioner believes emergency action is necessary because Act 274 of the 2016 Regular Session became effective August 1, 2016 mandating the promulgation of the Homeowner Disclosure form by November 30, 2016 as well as the fact that many policyholders may report potential minor claims without knowing such a claim will be used against them even if the value of the claim does not exceed the policy deductible and the insurance company does not make any payments to the insured or on behalf of the insured. Failure to adopt this Rule on an emergency basis will result in a delay in promulgation of the rule and the implementation of the disclosure form requirements.

**Title 37
INSURANCE**

Part XIII. Regulations

Chapter 153. Homeowner and Fire/Commercial Insurance Policy Disclosure Forms

§15301. Purpose

A. The purpose of Emergency Rule 29 is to adopt the homeowners and fire/commercial insurance policy disclosure forms developed by the commissioner of insurance for use by all property and casualty insurers issuing, delivering or renewing homeowners and fire/commercial insurance policies that provide coverage for damages to property in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§15303. Applicability and Scope

A. Emergency Rule 29 shall be applicable to all property and casualty insurers for all new homeowner policies and all renewals of existing homeowner policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§15305. Disclosure Forms

A. Every property and casualty insurer issuing, delivering or renewing homeowners or fire/commercial insurance policies that provide coverage for damage to property in Louisiana shall present to the insured as an insert in the front of the policy upon issuance, delivery or renewal the appropriate disclosure form.

B. Formatting Instructions. The text of the disclosure form should be formatted as shown in the applicable appendix in bold type of not less than a 14-point font.

C. Appendix A contains the form that sets forth the disclosures required by R.S. 22:1319 for use by all property and casualty insurers issuing fire/commercial policies covering property in Louisiana.

D. Appendix B contains the form that sets forth the disclosures required by R.S. 22:1332(B)(1)-(6) for use by all property and casualty insurers issuing homeowner policies covering property in Louisiana.

E. Appendix C contains the form that sets forth the disclosures required by R.S. 22:1332 (B)(1)-(7) for use by all property and casualty insurers issuing homeowner policies for damage to property in Louisiana that use claims that do not exceed the policy deductible and that do not result in a payment either to the insured or on behalf of the

insured to increase the cost of the policy premium in the future or as part of the basis for cancellation of a policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§15307. Rule Amendment

A. The commissioner of insurance reserves the right to amend, modify, alter or rescind all or any portion of Emergency Rule 29.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§15309. Severability Clause

A. If any provision of this emergency rule, or the application thereof to any 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 Emergency Rule are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§15311. Effective Date

A. The forms provided in Appendix A and Appendix B of Emergency Rule 29 shall become effective immediately upon adoption and the form provided in Appendix C shall become effective six months after adoption. All forms shall continue in full force and effect until amended, modified, altered or rescinded by the commissioner of insurance.

AUTHORITY NOTE: promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§15313. Appendices

Appendix A

**Important Information Required by
the Louisiana Department of Insurance**

Fire Insurance Policy Coverage Disclosure Summary
(other than Homeowners)

Or

Commercial Insurance Policy Coverage Disclosure Summary
This form is promulgated pursuant to LSA-R.S. 22:1319

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

****READ YOUR INSURANCE POLICY FOR
COMPLETE POLICY TERMS AND CONDITIONS****

COVERAGE(S) FOR WHICH PREMIUM WAS PAID

[INSERT PROPERTY COVERAGES]

Deductibles

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

- You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible

Examples—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with LSA-R.S. 22:1319 B(3) by selecting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss for each coverage included in the policy for which a premium has been paid. The total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible(s) so that the example demonstrates a net payment to the insured.

B. Utilizing the standardized example prepared by the LDOI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

The following assumes no co-insurance penalty and a 2% hurricane, wind, or named storm deductible. The amounts of loss to the damaged property are \$50,000 (building) and \$20,000 (business personal property).

Limits of insurance on building	\$ 100,000
Total amount of building loss	\$ 50,000
Less 2% deductible (\$100,000 X .02)	\$ 2,000
Net payment to insured for building loss	\$ 48,000
Limits of insurance on the business personal property	\$ 50,000
Total amount of business personal property loss	\$ 20,000
Less 2% deductible (\$50,000 X .02)	- \$ 1,000
Net payment to insured for business personal property loss	\$ 19,000
Total net payment to insured for building and business personal property loss (\$48,000 + \$19,000)	\$ 67,000

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes, but is not limited to, storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling or building and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy, from this or another insurer, if the amount of the primary flood insurance is not enough to cover the value of your property.

- You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD—Damage caused solely by mold [is/is not] covered under this policy.

****FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS****

Appendix B

Important Information Required by the Louisiana Department of Insurance

Homeowners Insurance Policy Coverage Disclosure Summary
This form is promulgated pursuant to LSA-R.S. 22:1332 (B)(1-6)

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

****READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS****

COVERAGE(S) FOR WHICH PREMIUM WAS PAID

[INSERT PERSONAL PROPERTY COVERAGES]

Example:

Coverage A	.....	Dwelling
Coverage B	.....	Other Structures
Coverage C	.....	Personal Property
Coverage D	.....	Loss of Use
Coverage E	.....	Personal Liability
Coverage F	.....	Medical Payments

Deductibles

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

- You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Example—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with LSA-R.S. 22:1332 B(6) by selecting and inserting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.

B. Utilizing the standardized example prepared by the LDOI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

If the total insured value of the dwelling or Coverage A is \$200,000 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be \$200,000.00 X .02 = \$4,000.00.

Losses:

Coverage A – Dwelling	.....	\$15,000
Coverage B – Other Structures	.....	\$ 2,500
Coverage C – Personal Property	.....	\$ 3,000
Coverage D – Loss of Use	.....	\$ 2,000
Total amount of all losses	.....	\$22,500
Less 2% hurricane, wind or named storm deductible	.....	\$ 4,000
Net payment to insured	.....	\$18,500

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

- You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD—Damage caused solely by mold [is/is not] covered under this policy.

****FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS****

Claim Filing Process

There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

Payment of Claims

Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

- ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.
- RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

****Refer to your policy for the terms and conditions describing how a particular loss is to be paid.**

Payment and Adjustment of Claims

Pursuant to LSA-R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written

offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars (\$1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

Appendix C

Important Information Required by the Louisiana Department of Insurance

Homeowners Insurance Policy Coverage Disclosure Summary
This form is promulgated pursuant to LSA-R.S. 22:1332 (B)(1-7)

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

****READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS****

COVERAGE(S) FOR WHICH PREMIUM WAS PAID

[INSERT PERSONAL PROPERTY COVERAGES]

Example:
Coverage A.....Dwelling
Coverage B.....Other Structures
Coverage C.....Personal Property
Coverage D.....Loss of Use
Coverage E.....Personal Liability
Coverage F.....Medical Payments

Deductibles

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

- You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.
- If you file a claim that does not exceed the policy deductible and that does not result in a payment either to you or on your behalf, that claim will be used to increase the cost of your policy's premium in the future or as part of the basis for cancellation of your policy.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Example—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with LSA-R.S. 22:1332 B(6) by selecting and inserting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.

B. Utilizing the standardized example prepared by the LDOI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

If the total insured value of the dwelling or Coverage A is \$200,000.00 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be \$200,000.00 X .02 = \$4,000.00.

Losses:

Coverage A – Dwelling	\$15,000
Coverage B – Other Structures	\$ 2,500
Coverage C – Personal Property	\$ 3,000
Coverage D – Loss of Use	\$ 2,000
Total amount of all losses	\$22,500
Less 2% hurricane, wind or named storm deductible	\$ 4,000
Net payment to insured	\$18,500

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

- You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD—Damage caused solely by mold [is/is not] covered under this policy.

****FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS****

Claim Filing Process

There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

Payment of Claims

Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

- ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.
- RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

** Refer to your policy for the terms and conditions describing how a particular loss is to be paid.

Payment and Adjustment of Claims

Pursuant to LSA-R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars (\$1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

James J. Donelon
Commissioner

1611#008

DECLARATION OF EMERGENCY

**Department of Insurance
Office of the Commissioner**

Emergency Rule 30—Suspension of Right to Cancel or Nonrenew—Residential, Commercial Residential, or Commercial Property Insurance due to Historic Flooding (LAC 37:XI.Chapter 51)

The Department of Insurance hereby exercises the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted by *Louisiana Revised Statutes 22:1 et seq.*, adopts Emergency Rule 30 which maintains and continues in effect the provisions of Emergency Rule 28 that became effective

August 12, 2016. Emergency Rule 30 shall be effective October 13, 2016 and shall remain effective through Thursday, February 9, 2017.

Emergency Rule 30 is issued pursuant to the transfer of authority to suspend provisions of regulatory statutes and implementing regulations from the Governor to the Commissioner of Insurance in Executive Order No. JBE 2016-58, signed by Governor John Bel Edwards on August 17, 2016, amended on September 12, 2016, by Executive Order No. JBE 2016-67, and subsequently amended on October 11, 2016, by Executive Order No. JBE 2016-71. The transfer of authority in Executive Order No. JBE 2016-58 is authorized in the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., and rules promulgated by the commissioner relative to the Louisiana Insurance Code are authorized in R.S. 22:11 and are promulgated through the aforementioned Administrative Procedure Act.

On August 12, 2016, Governor John Bel Edwards declared a state of emergency within the state of Louisiana in response to historic flooding in Louisiana. This state of emergency, declared pursuant to Proclamation No. 111 JBE 2016, extends from Friday, August 12, 2016, to Monday, September 12, 2016. Louisiana citizens have suffered damage due to this historic flooding. In some places, it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed, precluding habitation. The damage caused by this historic flooding has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, interruption of communication services, the temporary displacement of persons from their homes, loss of personal belongings, and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance-related matters. This historic flooding has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

Insurers have been working diligently to adjust and pay claims. However, due to a shortage of building materials, contractors, and construction workers, many policyholders who have received, or will soon receive, claim payments from insurers will find that they are unable to repair or reconstruct their residential, commercial residential, or commercial property within normal time frames. In many places, it could be months before residential, commercial residential, or commercial property damaged by the historic flood can be repaired or reconstructed. This inordinate time period to repair or reconstruct residential, commercial residential, or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential, or commercial property insurance. For these reasons, Executive Order No. JBE 2016-58, amended by Executive Order No. JBE 2016-67 signed by Governor John Bel Edwards on September 12, 2016, and subsequently amended by Executive Order No. JBE 2016-71, signed on October 11, 2016, remains in effect through Thursday, February 9, 2017.

The commissioner will be hindered in the proper performance of his duties and responsibilities under the Louisiana Insurance Code, as well as his duties and responsibilities regarding the referenced state of emergency, without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code and without the adoption of Emergency Rule 30, which relates to the cancellation and nonrenewal of all personal residential, commercial residential, or commercial property insurance subject to the Louisiana Insurance Code.

Therefore, Emergency Rule 30 is issued and shall apply to all insurers, property and casualty insurers, surplus lines insurers, and any and all other entities doing business in Louisiana and/or regulated by the Commissioner, regarding any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, all surplus lines insurance, and any and all other insurance regulated entities doing business in Louisiana and/or regulated by the commissioner.

Emergency Rule 30 is applicable to insureds who, as of 12:01 a.m. on August 12, 2016, had a personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in one of the following parishes: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, and West Feliciana, and any such parishes that may receive a major disaster declaration by the President of the United States or such officer acting under his authority.

Emergency Rule 30 is available on the Internet at www.lds.state.la.us and is available for inspection between the hours of 8 a.m. until 4:30 p.m. at the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802.

Title 37 INSURANCE Part XI. Rules

Chapter 51. Emergency Rule 30—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential, or Commercial Property Insurance Due To Historic Flooding

§5101. Benefits, Entitlements, and Protections

A. The benefits, entitlements, and protections of Emergency Rule 30 shall be applicable to insureds who, as of 12:01 a.m. on August 12, 2016, had a personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in one of the following parishes: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany,

Tangipahoa, Vermilion, Washington, West Baton Rouge, and West Feliciana, and any such parishes that may receive a major disaster declaration by the President of the United States or such officer acting under his authority.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5103. Applicability

A. Emergency Rule 30 shall apply to any and all types of personal residential, commercial residential, or commercial property insurance covering a dwelling, residential property, or commercial property located in one of the parishes set forth in Section 5101.A that sustained damage as a result of the August 2016 historic flood or its aftermath, including but not limited to, any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, and any and all other insurance regulated by the Commissioner that falls within the intent and purpose of Emergency Rule 30.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5105. Cancellation or Nonrenewal Suspended

A. Any statutory or regulatory provision, or any policy provisions contained in any and all policies of insurance set forth in Section 5103.A above, that authorizes any insurer, surplus lines insurer, or any other entity regulated by the Commissioner to cancel or nonrenew, on the grounds of a material change in the risk being insured, any personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in Louisiana that sustained damages as a result of the August 2016 historic flood or its aftermath, is suspended and unenforceable, and such cancellations or nonrenewals shall be prohibited through Thursday, February 9, 2017, unless extended by the Commissioner. Any such notice of cancellation or nonrenewal issued on or after August 12, 2016, through February 9, 2017, shall be null and void and have no force or effect. Furthermore, any such notice shall be reissued *de novo* to the insured in accordance with existing statutory requirements, and any such notice shall not be issued prior to February 10, 2017.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5107. Insured's Obligation

A. The insured is obligated to exercise good faith with regard to undertaking the repairs or reconstruction of the dwelling or residential property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5109. Insurer's Obligation

A. The insurer or surplus lines insurer or any other entity regulated by the commissioner is obligated to provide the insured with sufficient time to effectuate the repairs or reconstruction to the dwelling or residential property and to recognize the inordinate conditions that exist in the state of Louisiana with regard to the ability of the insured to engage a contractor, engage construction workers, obtain materials, and otherwise undertake to accomplish the necessary repairs or reconstruction of the dwelling, residential property, or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5111. Exemption from Compliance

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 30 upon the written request by the insurer if the commissioner determines that compliance with Emergency Rule 30 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5113. Purpose and Intent

A. The provisions of Emergency Rule 30 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana who desire to maintain or obtain personal residential, commercial residential, or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5115. Authority

A. The commissioner reserves the right to amend, modify, alter, or rescind all or any portion of Emergency Rule 30. Additionally, the commissioner reserves the right to extend Emergency Rule 30.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5117. Severability

A. If any Section or provision of Emergency Rule 30 is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of Emergency Rule 30 to any persons or circumstances to which provisions can be given effect without the invalid Sections or provisions, and the application to any such person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

§5119. Effective Date

Emergency Rule 30 shall be effective upon adoption and shall remain effective through Thursday, February 9, 2017.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, and Executive Order No. JBE 2016-71.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:

James J. Donelon
Commissioner

1611#001

DECLARATION OF EMERGENCY

**Department of Insurance
Office of the Commissioner**

Emergency Rule 31—Privacy of Consumer
(LAC 37:XIII.Chapter 99)

The Department of Insurance (department) hereby exercises the emergency provisions of the Administrative Procedures Act (LSA-R.S.49:953(B) and, pursuant to the authority of the Louisiana Insurance Code, LSA-22:1 et seq., adopts Emergency Rule 31.

Emergency Rule 31 amends Regulation 76 to bring it into compliance with the Fixing America’s Surface Transportation (“FAST”) Act, which was passed by the United States Congress and signed into law (Public Law 114-94; December 4, 2015). The FAST Act amended the Gramm-Leach-Bliley Act to provide an exemption from the annual privacy notice requirements required under Gramm-Leach-Bliley. As Regulation 76 mirrors the duties and responsibilities of those in the business of insurance with regards to the privacy of insurance consumer’s information, any amendments to Gramm-Leach-Bliley that were passed into law also affect the privacy notice requirements in Regulation 76. The FAST Act amendment serves the purpose, in both federal law and the amendment to Regulation 76, to relieve those in the business of insurance to whom it applies from duplicative privacy notice requirements, while at the same time continuing to preserve the privacy rights of insurance consumers.

The commissioner believes emergency action is necessary to promptly relieve those in the business of insurance from burdensome and costly mailings of the annual privacy notices, which, under the FAST Act, and amendment to Regulation 76, are no longer required if certain conditions are met. Most entities in the business of insurance mail these annual privacy notices to its customers at all times during the year, to coincide with the yearly anniversary of sending out the initial privacy notice. Therefore, by relieving those entities in the business of insurance of this burdensome and costly mailing as quickly as possible, those in the business of insurance may devote these resources to consumer service. Also, with the passage of the FAST Act, the current regulation is inconsistent with federal law. The department must bring Regulation 76 into compliance with federal law so as to maintain its regulatory authority.

Emergency Rule 31 shall be effective upon adoption and unless extended, shall remain in effect for a period of 120 days or until adoption of the final Regulation 76 through normal rulemaking process, whichever occurs first.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 99. Regulation 76—Privacy of Consumer

§9901. Authority

A. This regulation is adopted pursuant to R.S. 49:953(B) and R.S. 22:2 which charges the commissioner of insurance with the duty to enforce and administer all of the provisions of the *Insurance Code*, the purpose of which is to regulate the business of insurance in all of its phases in the public interest. Sections 501(b) and 505(a)(6) of the Gramm-Leach-Bliley Act specifically designate the Department of Insurance as the agency to establish the appropriate standards covering any person engaged in providing insurance under state law and the Fixing America’s Surface Transportation Act, which provides for certain annual privacy reporting exemptions. R.S. 22:11 and R.S. 22:1595 grants the commissioner of insurance authority to promulgate rules and regulations as are necessary for the implementation of the provisions of title R.S. 22:1604 specifically refers to the protection of the interests of insurance policyholders in this state with respect to financial institution insurance sales, and R.S. 22:1595 grants the commissioner of insurance authority to promulgate rules and regulations as may be necessary to effectuate the provisions of Chapter 5, Financial Institution Sales in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1595, 22:1604, Gramm-Leach-Bliley Act, Public Law 106-102-Nov. 12, 1999, and Fixing America’s Surface Transportation Act, Public Law 114-94-Dec. 4, 2015).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001), amended LR 42:

**Subchapter B. Privacy and Opt Out Notices for
Financial Information**

§9913. Annual Privacy Notice to Customers Required

A.1. - C. ...

D. Exemption from Annual Privacy Notice. A licensee that:

1. provides nonpublic personal information to nonaffiliated third parties only in accordance with this Emergency Rule 31, Regulation 76 and R.S.22:1591-R.S.22:1605; and

2. has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section, shall not be required to provide an annual disclosure under this section until such time as the licensee fails to comply with any criteria described in Paragraphs 1 and 2 of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1595, 22:1604, Gramm-Leach-Bliley Act, Public Law 106-102-Nov. 12, 1999, and Fixing America’s Surface Transportation Act, Public Law 114-94-Dec. 4, 2015).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:552 (April 2001), amended LR 42:

**Subchapter D. Exceptions to Limits on Disclosures of
Financial Information**

§9951. Severability

A. If any provision or item of Regulation 79 or the Emergency Rule 31, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items or applications of Regulation 79 or Emergency Rule 31 which can be given effect without the invalid provision, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1595, 22:1604, Gramm-Leach-Bliley Act, Public Law 106-102-Nov. 12, 1999, and Fixing America's Surface Transportation Act, Public Law 114-94-Dec. 4, 2015).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001), amended LR 42:

§9953. Effective Date

A. Emergency Rule 31 shall be effective upon adoption and unless extended, shall remain in effect for a period of 120 days or until adoption of the final Regulation 76 through normal rulemaking process, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1595, 22:1604, Gramm-Leach-Bliley Act, Public Law 106-102-Nov. 12, 1999, and Fixing America's Surface Transportation Act, Public Law 114-94-Dec. 4, 2015).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001), amended LR 42:

James J. Donelon
Commissioner

1611#007

Rules

RULE

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. the Department of Agriculture and Forestry (“department”), through the Office Animal Health and Food Safety, and the Board of Animal Health has amended 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. LAC 7:XXI.Chapter 17 aligns the need for disease control and facilitates commerce for the alternative livestock industry. The Rule clarifies requirements for the commissioning and decommissioning of farm raised white tailed deer pens, updates 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 Rule removes the harvesting permit fee and provides that a late fee of \$125 may be assessed if the annual farm raising license fee is not timely paid. The 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 Rule allows licensure of an area not less than 250 acres and remove a maximum number of acres. The Rule removes the requirement of obtaining a harvesting permit prior to harvesting or killing farm raised alternative livestock. The Rule removes outdated provisions and maintains 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), amended LR 42:1864 (November 2016).

§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 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), amended LR 42:1864 (November 2016).

§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), amended LR 42:1865 (November 2016).

§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 percent 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), amended LR 42:1865 (November 2016).

§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), amended LR 42:1865 (November 2016).

§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 percent 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), amended LR 42:1865 (November 2016).

§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), amended LR 42:1866 (November 2016).

§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), amended LR 42:1867 (November 2016).

§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), amended LR 42:1867 (November 2016).

§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), amended LR 42:1867 (November 2016).

§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), amended LR 42:1867 (November 2016).

Mike Strain, DVM
Commissioner

1611#040

RULE

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, the Department of Agriculture and Forestry (“department”), through the Office of Forestry, has amended the above cited regulation. LAC 7:XXXIX.1307 allows private landowners to cost share an two additional services at a higher rate through the Forest Productivity Program. Section 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. Section 1311 exempts prescribed burning from the list of practices which require the landowner to maintain the land in forestry usage for 10 years from the date the department approves the cooperative agreement. This will encourage prescribed burning, which helps reduce the frequency and intensity of wildfires. Section 1315 reduces 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/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/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 42:1868 (November 2016).

§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 42:1868 (November 2016).

§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 42:1868 (November 2016).

Mike Strain, DVM
Commissioner

1611#039

RULE

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, 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 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 42:1869 (November 2016).

Shan N. Davis
Executive Director

1611#020

RULE

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, the Board of Elementary and Secondary Education adopted revisions to §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 42:1869 (November 2016).551 (April 2016), LR 42:1869 (November 2016).

Shan N. Davis
Executive Director

1611#021

RULE

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, the Board of Elementary and Secondary Education adopted revisions to *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 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 42:1870 (November 2016).

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 42:1870 (November 2016).

Shan N. Davis
Executive Director

1611#022

RULE

Board of Elementary and Secondary Education

Bulletin 140—Louisiana Early Childhood Care and Education Network (LAC 28:CLXVII.101, 103, 313, 503, 509-517, 521, 703-709, and 713)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *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 revisions reflect key shifts based on results from the 2015-2016 learning year. First, the revisions communicate differences in quality by weighting domains equally and using a four-level scale in order to help families understand differences. Second, the 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 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 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 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 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 42:1871 (November 2016).

§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 42:1871 (November 2016).

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 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 L.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 L.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. The appeal procedure shall be used when needed to address unforeseen and aberrant factors impacting type III early learning centers or when needed to address issues that arise when the literal application of the academic approval regulations does not consider certain unforeseen and unusual circumstances.

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. All appeal requests shall clearly state the specific reasons for requesting the appeal and the reasons why the appeal should be granted and shall include any necessary supporting documentation.

5. The department shall review all timely submitted appeal requests and make recommendations to BESE during the first regularly scheduled BESE meeting following receipt of the appeal requests, or during the second regularly scheduled BESE meeting if an appeal request is received within 10 working days of the next regularly scheduled BESE meeting. Within this interval, the department shall notify the center of its recommendation and allow the center to respond in writing. The department's recommendation and the center's response shall be submitted to BESE for final disposition.

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 42:1871 (November 2016).

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 42:1872 (November 2016).

§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 42:1873 (November 2016).

§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:

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 42:1874 (November 2016).

§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 42:1874 (November 2016).

§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 42:1875 (November 2016).

§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 42:1875 (November 2016).

§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 42:1876 (November 2016).

§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 42:1876 (November 2016).

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 42:1876 (November 2016).

§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 42:1876 (November 2016).

§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 42:1876 (November 2016).

§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 42:1877 (November 2016).

§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 42:1877 (November 2016).

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RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook
for School Administrators
(LAC 28:CXV.1103, 2307, 2318, 2907, 3309, and 3701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education (BESE) has amended 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 42:1877 (November 2016).

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) iSTEOP 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 42:1878 (November 2016).

§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 42:1062 (July 2016), LR 42:1878 (November 2016).

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

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 (iSTEOP) 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) iSTEOP 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) iSTEOP Oral Reading Fluency; or (c) Fountas and Pinnell Oral Reading Rate; or (d) STEP Reading Rate/Fluency.

Program. Connections is a one-year process for overage 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 42:1878 (November 2016).

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 42:1879 (November 2016).

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 42:1879 (November 2016).

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RULE

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, the Board of Elementary and Secondary Education has adopted Section 417 of *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 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 42:1879 (November 2016).

Shan N. Davis
Executive Director

1611#025

RULE

Board of Regents Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 701, 703, and 2107)

The Board of Regents (BOR) has amended its scholarship/grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6). (SG16172R)

Title 28 EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and

terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Award Amount—

a. through the 2015-2016 academic year (college), an amount equal to tuition at the school attended, for those students attending a Louisiana public college or university, as determined by the commission, which may be used by the student to pay any educational expense included in that student's "cost of attendance." The amount paid for TOPS and TOPS-Tech Awards shall be as follows:

i. for students with the TOPS Opportunity, Performance, and Honors Award attending a Louisiana public college or university and enrolled in an academic degree program, the amount shall equal the actual cost of tuition;

ii. for students with the TOPS Opportunity, Performance, and Honors Award attending a regionally accredited independent college or university in Louisiana that is a member of the Louisiana Association of Independent Colleges and Universities or an out-of-state college or university if all of the conditions of §703.I are met and enrolled in an academic degree program, the amount shall equal the weighted average award amount;

iii. for students with the TOPS Opportunity, Performance, and Honors Award attending a Louisiana public college or university and enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree, the amount shall equal the actual cost of tuition;

iv. for students with the TOPS Opportunity, Performance, and Honors Award attending a regionally accredited independent college or university in Louisiana that is a member of the Louisiana Association of Independent Colleges and Universities or who attend an eligible cosmetology or proprietary school and enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree, the amount shall equal the average award amount (TOPS-Tech);

v. for students with the TOPS-Tech Award attending an eligible public college or university that does not offer an academic undergraduate degree at the baccalaureate level or higher and enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree, the amount shall equal the actual cost of tuition;

vi. for students with a TOPS-Tech Award attending an eligible college or university that offers an academic undergraduate degree at the baccalaureate level or higher and enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree, the amount shall equal the average award amount (TOPS-Tech);

vii. for students with the TOPS Opportunity, Performance, and Honors Award enrolled in a Louisiana professional school, the amount shall be equal to the tuition charged or the tuition charged a student pursuing a baccalaureate degree at the highest cost public school, whichever is less or the weighted average award amount, depending upon whether the Louisiana professional school is a public or private school;

viii. for students with the TOPS Opportunity, Performance and Honors Award enrolled in a Louisiana graduate degree program, the amount shall be equal to the tuition or the tuition charged for a student while pursuing a baccalaureate degree at the highest cost public school in the state, whichever is less;

b. beginning with the 2016-2017 academic year (college), the award amount determined by the administering agency in accordance with Clauses a.i-a.viii above during the 2016-2017 academic year (college), plus any increase in the award amount specifically authorized by the Louisiana Legislature.

* * *

Eligible Noncitizen—

a. an individual who can provide documentation from the U.S. Citizenship and Immigration Services (USCIS) or its successor that he is in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident, including, but not limited to, refugees, persons granted asylum, Cuban-Haitian entrants, temporary residents under the recent Immigration Reform and Control Act of 1986, and others. A permanent resident of the United States must provide documentation from the USCIS to verify permanent residency. For 1997, 1998 and 1999 high school graduates, an eligible noncitizen shall be treated as meeting the citizenship requirements for an award under this Part;

b. beginning with the 2018-2019 academic year (high school) and later, a student who is not a citizen of the United States but who is the child of a non-United States citizen who is either serving in any branch of the United States armed forces or has been honorably discharged from any branch of the United States armed forces shall be treated as meeting the citizenship requirements for an award under this Part.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:2854 (December 2010), LR 37:1561 (June 2011), LR 37:1562 (June 2011), LR 38:1953 (August 2012), LR 38:3156 (December 2012), LR 39:308 (February 2013), LR 40:53 (January 2014), LR 40:281 (February 2014), LR 41:649, 658 (April 2015), LR 41:2595 (December 2015), LR 42:1880 (November 2016).

Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§701. General Provisions

A. - E.1.b. ...

2.a. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (TOPS), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, 12 quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1(H), or LAC 28:IV.503.D, 509.C, or 701.E.2.b. If a student attends an eligible summer session, quarter, term, or equivalent unit and requests that their TOPS Award be paid for that session, semester, quarter, term, or equivalent unit, the stipend will also be paid since payment of a TOPS Award for a summer session, quarter, term, or equivalent unit will count toward the eight semester limit for TOPS.

b. The semester or term count for a student shall not be increased for any semester or term a student is unable to complete because of orders to active duty in the United States Armed Forces or National Guard, whether or not a full refund for the TOPS payment for that semester or term is received by LOSFA, provided that any amount of a stipend paid and not refunded shall be counted toward the total stipends allowed by law.

3.a. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (TOPS), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, 12 quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1(H), or LAC 28:IV.503.D, 509.C or 701.E.3.b. If a student attends an eligible summer session, quarter, term, or equivalent unit and requests that their TOPS Award be paid for that session, semester, quarter, term, or equivalent unit, the stipend will also be paid since payment of a TOPS Award for a summer session, quarter, term, or equivalent unit will count toward the eight semester limit for TOPS.

b. The semester or term count for a student shall not be increased for any semester or term a student is unable to complete because of orders to active duty in the United States Armed Forces or National Guard, whether or not a full refund for the TOPS payment for that semester or term is received by LOSFA, provided that any amount of a stipend paid and not refunded shall be counted toward the total stipends allowed by law.

4.a. Through the 2009-2010 academic year (college), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus any applicable TOPS stipend and a

sum of not more than \$150 per semester or \$300 annually for the actual cost of books and other instructional materials.

b. Beginning with the 2010-2011 academic year (college), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students with the TOPS Opportunity, Performance and Honors Award participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus a sum of \$300 per semester or \$600 per academic year to be applied toward the cost of books and other instructional materials. In addition, those students with the Performance Award shall receive \$400 per semester or \$800 per academic year for other educational expenses and those students with the Honors Award shall receive \$800 per semester or \$1,600 per academic year for other educational expenses. If the student attends an eligible summer session, quarter, term, or equivalent unit and requests that their TOPS Award be paid for that session, semester, quarter, term, or equivalent unit in accordance with this Paragraph, the amounts stipulated herein will also be paid since payment of a TOPS Award for a summer session, quarter, term, or equivalent unit will count toward the eight semester limit for TOPS.

E.5. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1645-1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995 (September 2000), LR 26:2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003), LR 29:2372 (November 2003), LR 30:1161 (June 2004), LR 31:2213 (September 2005), LR 35:228 (February 2009), LR 36:2854 (December 2010), LR 40:1002 (May 2014), LR 41:663 (April 2015), LR 42:1881 (November 2016).

§703. Establishing Eligibility

A. - A.5.g.viii. ...

6. have achieved an ACT score, as defined in §301 of at least:

- a. if qualifying under the terms of §703.A.5.a, b, or g:
 - i. the state's reported prior year ACT composite average, truncated to a whole number, but never less than 20 for the Opportunity Award; or
 - ii. a 23 for the Performance Award; or
 - iii. a 27 for the Honors Award; or
- b. if qualifying under §703.A.5.c:
 - i. is a Louisiana resident, except as defined in Subparagraph h of the definition of *Louisiana resident* in §301:
 - (a). the state's reported prior year average, truncated to a whole number plus 3 points, but never less than 23 for the Opportunity Award; or
 - (b). a 26 for the Performance Award; or
 - (c). a 30 for the Honors Award; and
 - ii. is a Louisiana resident as defined in Subparagraph h of the definition of *Louisiana resident* in §301:

- (a). the state's reported prior year average, truncated to a whole number, plus 2 points, but never less than 22 for the Opportunity Award; or

- (b). a 25 for the Performance Award; or

- (c). a 29 for the Honors Award; and

- c.i. if completed the 12th grade level of an approved home study program during or before the academic year (high school) 2003-2004 and qualifying under §703.A.5.d:

- (a). the state's reported prior year average, truncated to a whole number, plus 3 points, but never less than 23 for the Opportunity Award; or

- (b). a 26 for the Performance Award; or

- (c). a 30 for the Honors Award; and

- ii. if completed the 12th grade level of an approved home study program during or after academic year (high school) 2004-2005 and through academic year (high school) 2006-2007 and qualifying under §703.A.5.d:

- (a). the state's reported prior year average, truncated to a whole number plus 2 points, but never less than 22 for the Opportunity Award; or

- (b). a 25 for the Performance Award; or

- (c). a 29 for the Honors Award; and

- iii. if completed the 12th grade level of an approved home study program during or after the academic year (high school) 2007-2008 and after, and qualifying under §703.A.5.d:

- (a). the state's reported prior year average, truncated to a whole number, plus 2 points, but never less than 22 for the Opportunity Award; or

- (b). a 24 for the Performance Award; or

- (c). a 28 for the Honors Award; and

- d.i. if qualifying under §703.A.5.e by graduating from a high school defined in §1701.A.5; which is limited to the Opportunity Award only; the state's reported prior year average, truncated to a whole number, plus 3 points, but never less than 23;

- ii. if qualifying under §703.A.5.e by successfully completing the 12th grade level a home study program approved by BESE and conducted outside the United States and its territories during or before the academic year (high school) 2003-2004 or during or after the academic year (high school) 2008-2009; which is limited to the Opportunity Award only; the state's reported prior year average, truncated to a whole number, plus 3 points, but never less than 23;

- iii. if qualifying under §703.A.5.e by successfully completing the 12th grade level a home study program approved by BESE and conducted outside the United States and its territories during or after the academic year (high school) 2004-2005 and through the academic year (high school) 2007-2008; which is limited to the Opportunity Award only; the state's reported prior year average, truncated to a whole number, plus 2 points, but never less than 22;

- e. if qualifying under §703.A.5.f, which is limited to the Performance Award only, a 24; and

7. not have a criminal conviction, except for misdemeanor traffic violations, and if the student has been in the United States Armed Forces and has separated from such service, has received an honorable discharge or general discharge under honorable conditions; and

8. agree that awards will be used exclusively for educational expenses.

B. Students qualifying:

1. under §703.A.5.a and b during or before academic year (high school) 2006-2007, must have attained a cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

- a. a 2.50 for the Opportunity Award; or
- b. a 3.50 for the Performance or Honors Awards;

2. under §703.A.5.a and b during or after academic year (high school) 2007-2008, must have attained a cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

- a. a 2.50 for the Opportunity Award; or
- b. a 3.00 for the Performance or Honors Awards;

3. under §703.A.5.a and b in academic year (high school) 2020-2021 must have attained a TOPS cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

- a. a 2.50 for the Opportunity Award; or
- b. a 3.25 for the Performance; or
- c. a 3.50 for the Honors Award;

4. under §703.A.5.f and graduating in academic year (high school) 2000-2001 through 2005-2006, must have attained a TOPS cumulative high school grade point average, based on a 4.00 maximum scale, of at least a 3.00 for the Performance Award.

C. - J.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1, and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011), LR 38:354 (February 2012), LR 38:3158 (December 2012), LR 39:481 (March 2013), LR 39:2485 (September 2013), LR 40:54 (January 2014), LR 41:373 (February 2015), LR 41:651, 664 (April 2015), LR 41:1486 (August 2015), LR 41:2596, 2599 (December 2015), LR 42:1882 (November 2016).

Chapter 21. Miscellaneous Provisions and Exceptions
§2107. Funds and Funding

A. - B. ...

C. Insufficient Funds Appropriated

1. All BOR-administered state scholarship and grant program awards are contingent upon the annual appropriation of funds by the Louisiana Legislature.

2. In the event appropriated funds are insufficient to fully reimburse institutions for awards and stipends for all students determined eligible for the TOPS Opportunity, Performance, Honors and Tech Awards for a given academic

year, each student's award, including stipends for TOPS Performance and Honors awards, shall be reduced by an equal percentage on a pro rata basis.

3. A student whose award is reduced pursuant to this section shall not be required to accept payment of his award or enroll or maintain continuous enrollment in an eligible college or university during the time period during which there is a funding shortfall. A student who exercises this option:

a. shall be eligible to receive his remaining TOPS award upon enrollment in an eligible college or university, provided the student meets the continuation requirements for his award except as specifically set forth in this Section; and

b. shall exhaust all award eligibility within five years of the reduction of his award, provided that if the student requests and is granted an exception to the requirement to enroll full time or to maintain continuous enrollment in school in accordance with §1901 of these rules, the time period within which the student must exhaust his award eligibility shall be extended by the number of semesters/terms for which he receives an exception.

4. The provisions of this Section shall not apply to the stipend for books and other instructional materials provided to persons serving in the Louisiana National Guard as set forth in §701.E.4.a and b of these rules or to the TOPS-Tech Early Start Program.

D. Stop Payment of Uncleared Checks. The LASFAC may stop payment on checks which are issued as scholarship or grant awards but not negotiated by September 1 following the close of the academic year for which they were issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1648 (December 1997), repromulgated LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), amended LR 28:449 (March 2002), LR 28:777 (April 2002), LR 28:2333 (November 2002), LR 31:40 (January 2005), LR 38:3162 (December 2012), LR 42:1883 (November 2016).

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1611#036

RULE

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 has amended 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 42:1884 (November 2016).

Herman Robinson
General Counsel

1611#028

RULE

Department of Environmental Quality Office of the Secretary Legal Division

Reportable Quantity List for Pollutants (LAC 33:I.3905, 3917, and 3931)(OS093)

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 has amended the Office of the Secretary regulations, LAC 33:I.3905 and 3931 (OS093).

This Rule amends LDEQ's existing reportable quantity (RQ) list under LAC 33:I.3931 to reflect the following federal lists:

- the Environmental Protection Agency's list of extremely hazardous substances under 40 CFR 355, appendix A; and
- the Department of Transportation's list of hazardous substances under 49 CFR 172.101.

In addition, RQs have been established for any material on which maintenance of a material safety data sheet (MSDS) is required under the Occupational Safety and Health Administration's hazard communication standard as found in 29 CFR 1910.1200 et seq., and that does not appear on any of the lists incorporated by reference.

Finally, the LDEQ-specific RQs in the table under LAC 33:I.3931.B have been deleted, except for brine from solution mining, oil, produced water, and sweet pipeline gas (methane/ethane). This action is required to align LDEQ's RQ list with that of the Louisiana Department of Public

Safety and Corrections (i.e., State Police) under LAC 33:V.10111.D. The basis and rationale for this Rule are to revise the RQ list under LAC 33:I.3931 to be consistent with State Police reporting requirements under LAC 33:V.10111.D. 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 I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter A. General

§3905. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

* * *

Compressed Gas—any material (or mixture) which exerts in the packaging a gauge pressure of 200 kPa (29.0 psig/43.8 psia) or greater at 20 degrees C (68 degrees F).

* * *

Discharge—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, leaching, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, waters of the state, or the ground. A release shall not include a federal or state permitted release.

* * *

Flammable Liquid—as defined in 49 CFR 173.120.

* * *

Release—the accidental or intentional spilling, leaking, pumping, pouring, emitting, escaping, leaching, or dumping of hazardous substances or other pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release.

* * *

Unauthorized Discharge—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the administrative authority.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2204(A) and 30:2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of Secretary, Legal Affairs Division, LR 33:2080 (October 2007), LR 33:2627 (December 2007), LR 36:1242 (June 2010), amended by the Office of the Secretary, Legal Division, LR 42:1885 (November 2016).

Subchapter C. Requirements for Non-Emergency Notification

§3917. Notification Requirements for Unauthorized Discharges That Do Not Cause Emergency Conditions

A. Except as noted in Subsection D below, in the event of an unauthorized discharge that exceeds a reportable quantity specified in Subchapter E of this Chapter, but that does not cause an emergency condition, the discharger shall promptly notify DPS by telephone at (225) 925-6595 (collect calls accepted 24 hours a day) within 24 hours after learning of the discharge.

B. - C. ...

D. In the event an unauthorized discharge that does not cause an emergency condition exceeds a reportable quantity specified in LAC 33:I.3931.A.1.c, LAC 33:I.3931.A.1.d, LAC 33:I.3931.B.2, or LAC 33:I.3931.B.3, but no other reportable quantity specified in Subchapter E of this Chapter, the discharger shall promptly notify DPS as described in Subsection A of this Section only if the discharge could reasonably be expected to escape the confinement of the facility or to an area to which the general public has unrestricted access.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 36:1240 (June 2010), amended by the Office of the Secretary, Legal Division, LR 42:1885 (November 2016).

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations

1. Except as provided in Subsection B of this Section, the following federal reportable quantity (RQ) lists are incorporated by reference:

a. 40 CFR 117.3, July 1, 2016, table 117.3—reportable quantities of hazardous substances designated pursuant to section 311 of the Clean Water Act;

b. 40 CFR 302.4, July 1, 2016, table 302.4—list of hazardous substances and reportable quantities;

c. 40 CFR 355, July 1, 2016, appendix A—the list of extremely hazardous substances and their threshold planning quantities; and

d. 49 CFR 172.101, July 1, 2016, appendix A—list of hazardous substances and reportable quantities.

2. The following administrative reporting exemptions are hereby incorporated by reference:

a. 40 CFR 302.6(d) and (e), July 1, 2016; and

b. 40 CFR 355.31, July 1, 2016.

B. Modifications or Additions

1. The following table contains modifications to the federal RQ lists incorporated by reference in Subsection A of this Section, as well as RQs for additional pollutants.

Pollutant	Pounds
Acetaldehyde - Barium compounds	Repealed.
Brine from Solution Mining	5000
n Butyl alcohol - Nitric acid	Repealed.
Oil	1 barrel
Phthalic anhydride - Polynuclear aromatic hydrocarbons***	Repealed.
Produced water	1 barrel
Propionaldehyde - Sulfur dioxide	Repealed.
Sweet pipeline gas (Methane/Ethane)	42000 (1,000,000 scf)
Vinyl acetate - Methyl ethyl ketone	Repealed.

2. The RQ for any material on which maintenance of a material safety data sheet (MSDS) is required under the Occupational Safety and Health Administration's hazard communication standard as found in 29 CFR 1910.1200 et seq., and that does not appear on any of the lists incorporated by reference in Subsection A of this Section or in the table set forth in Subsection B of this Section shall be 5000 pounds, except that the RQ for all:

- compressed or refrigerated flammable gases shall be 100 pounds;
- flammable liquids shall be 100 pounds; and
- other liquids requiring maintenance of an MSDS shall be 1000 pounds.

3. Notwithstanding Subparagraph B.2.a of this Section, for facilities that meet the criteria described in LAC 33:V.10111.E.2, the RQ for compressed or refrigerated flammable gases shall be 1000 pounds.

4. The controlled release of hydrogen for maintenance, during the start-up or shutdown of industrial equipment, or for other purposes is not reportable provided the release cannot be reasonably expected to affect the public safety beyond the boundaries of the facility.

C. ...

D. State Hazardous Material Reportable Quantity Exemptions

1. LAC 33:V.10111.E.1.b-d.

E. Spill Prevention and Control. The provisions of LAC 33:IX.Chapter 9 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 this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:2248 (December 2006), LR 33:640 (April 2007), LR 33:2628 (December 2007), LR 34:69 (January 2008), LR 34:866 (May 2008), repromulgated LR 34:981 (June 2008), amended LR 35:1106 (June 2009), LR 36:1242 (June 2010),

LR 36:2272 (October 2010), amended by the Office of the Secretary, Legal Division, LR 42:1885 (November 2016).

Herman Robinson
General Counsel

1611#027

RULE

Office of the Governor Real Estate Commission

Documentation (LAC 46:LXVII.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., the Louisiana Real Estate Commission has amended LAC 46:LXVII.305. The purpose of this 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 42:1886 (November 2016).

Bruce Unangst
Executive Director

1611#042

RULE

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 has amended 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 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 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 the net operation revenue.

1. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to be assessed a fee of 1 1/2 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.

F. - F.4. ...

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 42:1887 (November 2016).

§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 providers 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 42:1887 (November 2016).

§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 1 1/2 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 42:1887 (November 2016).

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.

Rebekah E. Gee MD, MPH
Secretary

1611#066

RULE

**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 has amended LAC 48:I.4001 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 1. General**

Chapter 40. Provider Fees

§4001. Specific Fees

- A. - E.I.d. ...
- 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 42:1888 (November 2016).

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.

Rebekah E. Gee MD, MPH
Secretary

1611#067

RULE

**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 has repealed and replaced all of the rules governing the Medically Needy Program, and adopted 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 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 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.

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 42:1888 (November 2016).

Rebekah E. Gee MD, MPH
Secretary

1611#068

RULE

Department of Health Bureau of Health Services Financing

Medicaid Eligibility
New Adult Eligibility Group
(LAC 50:III.2317)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:III.2317 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 III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2317. New Adult Eligibility Group

A. - C.2. ...

3. not entitled to, or enrolled in Medicare Part A or Medicare Part B;

4. not otherwise eligible for and enrolled in mandatory coverage under the Medicaid State Plan;

a. parents, children or disabled persons receiving Supplemental Security Income (SSI) benefits are excluded from enrollment as a new adult; and

5. parents or other caretaker relatives living with a dependent child(ren) under age 19 who are receiving benefits under Medicaid, the Children's Health Insurance Program, or otherwise enrolled in minimum essential coverage as defined in 42 CFR 435.4.

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

Rebekah E. Gee MD, MPH
Secretary

1611#069

RULE

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 has adopted 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 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 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

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 42:1890 (November 2016).

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.

Rebekah E. Gee MD, MPH
Secretary

1611#070

RULE

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 has repealed and replaced 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 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 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 42:1891 (November 2016).

§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 42:1893 (November 2016).

§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 42:1894 (November 2016).

§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 42:1895 (November 2016).

§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 42:1895 (November 2016).

§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 42:1896 (November 2016).

§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 42:1896 (November 2016).

§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 42:1896 (November 2016).

§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 42:1897 (November 2016).

§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 administration 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 42:1898 (November 2016).

§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 42:1899 (November 2016).

§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 42:1899 (November 2016).

§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 42:1899 (November 2016).

§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 42:1900 (November 2016).

§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 42:1900 (November 2016).

§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 42:1901 (November 2016).

§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 42:1901 (November 2016).

§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 42:1901 (November 2016).

§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 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 42:1901 (November 2016).

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 42:1902 (November 2016).

§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 42:1902 (November 2016).

§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 42:1902 (November 2016).

§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 42:1903 (November 2016).

§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 42:1903 (November 2016).

§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 42:1903 (November 2016).

§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 42:1904 (November 2016).

§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 42:1904 (November 2016).

§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 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 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 timelines, 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 42:1905 (November 2016).

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 42:1911 (November 2016).

§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 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 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 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 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 42:1912 (November 2016).

§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 \$2,000.

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 42:1914 (November 2016).

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 42:1915 (November 2016).

§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 42:1915 (November 2016).

§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 42:1916 (November 2016).

§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 42:1916 (November 2016).

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 42:1916 (November 2016).

§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 42:1917 (November 2016).

§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 physician intervention, or significant change in the resident's physical, mental or psychosocial 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 42:1917 (November 2016).

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 42:1918 (November 2016).

§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 42:1918 (November 2016).

§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 42:1918 (November 2016).

§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 42:1919 (November 2016).

§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 42:1919 (November 2016).

§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 42:1919 (November 2016).

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 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 42:1920 (November 2016).

§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 42:1920 (November 2016).

§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 42:1920 (November 2016).

§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 42:1921 (November 2016).

§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.

2. 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.

3. 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.

4. 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 42:1922 (November 2016).

§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 42:1922 (November 2016).

§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 42:1922 (November 2016).

§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 42:1922 (November 2016).

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 42:1923 (November 2016).

§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 42:1923 (November 2016).

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 of 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 42:1923 (November 2016).

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 42:1924 (November 2016).

§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 42:1924 (November 2016).

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 42:1924 (November 2016).

§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 42:1924 (November 2016).

§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 42:1925 (November 2016).

§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 42:1925 (November 2016).

§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 42:1925 (November 2016).

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 42:1925 (November 2016).

§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 42:1925 (November 2016).

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 42:1926 (November 2016).

§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 42:1926 (November 2016).

§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 42:1926 (November 2016).

§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 42:1927 (November 2016).

§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 42:1927 (November 2016).

§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 42:1928 (November 2016).

§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 42:1928 (November 2016).

§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 42:1929 (November 2016).

§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 42:1929 (November 2016).

§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 42:1929 (November 2016).

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 42:1930 (November 2016).

§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 42:1930 (November 2016).

§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 42:1930 (November 2016).

§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 42:1930 (November 2016).

§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 42:1930 (November 2016).

§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 42:1930 (November 2016).

§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 42:1930 (November 2016).

Rebekah E. Gee MD, MPH
Secretary

1611#071

RULE

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services—Long-Term
Non-Medical Transportation Services
(LAC 50:XV.12903)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:XV.12903 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 9. Personal Care Services

Chapter 129. Long Term Care

§12903. Covered Services

- A. - C. ...
- 1. Repealed.
- D. - E. ...

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 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 42:1931 (November 2016).

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.

Rebekah E. Gee MD, MPH
Secretary

1611#072

RULE

**Department of Health
Emergency Response Network Board**

Trauma Program Recognition
(LAC 48:I.Chapter 197)

The Department of Health, Louisiana Emergency Response Network Board, has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, has adopted 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

§19701. 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 42:1931 (November 2016).

§19703. 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 42:1931 (November 2016).

§19705. 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 42:1932 (November 2016).

§19707. 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 42:1932 (November 2016).

Paige Hargrove
Executive Director

1611#009

RULE

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 has amended 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 42:1932 (November 2016).

§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 42:1932 (November 2016).

§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 42:1933 (November 2016).

§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

§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

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 15 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 42:1933 (November 2016).

§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 42:1933 (November 2016).

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 company that (s)he is authorized to execute and file such instrument.
(Name of Applicant) (Title of Officer)

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 42:1933 (November 2016).

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 _____

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 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), LR 42:1935 (November 2016).

James J. Donelon
Commissioner

1611#012

RULE

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., has amended 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 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 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 42:1938 (November 2016).

§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 42:1938 (November 2016).

§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 42:1938 (November 2016).

§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
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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 42:1938 (November 2016).

§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 42:1940 (November 2016).

§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 42:1940 (November 2016).

James J. Donelon
Commissioner

1611#014

RULE

**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., has amended 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 42:1940 (November 2016).

§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 42:1940 (November 2016).

§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 42:1940 (November 2016).

**§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 Subsection 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 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, 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 42:1940 (November 2016).

§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 42:1947 (November 2016).

§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 42:1952 (November 2016).

§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 42:1957 (November 2016).

§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 42:1957 (November 2016).

§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 42:1957 (November 2016).

James J. Donelon
Commissioner

1611#013

RULE

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 has amended 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. This action has adopted 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 31 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 31 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 31 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 31 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 31 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 43: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 42:1957 (November 2016).

§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 20 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 20 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 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 42:1958 (November 2016).

§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 42:1959 (November 2016).

Richard P. Ieyoub
Commissioner

1611#035

RULE

**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, the Board of Trustees for the Louisiana Assessors’ Retirement Fund 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 rules have been amended and 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 action has not been prepared.

**Title 58
RETIREMENT**

Part XIX. Assessors’ Retirement Fund

Chapter 1. General Provisions

§103. Actuarial Equivalent

A. - A.2. ...

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 unisexed 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 unisexed 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 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 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 42:1959 (November 2016).

§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 42:1960 (November 2016).

Nannette Menou
Executive Director

1611#050

RULE

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, 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 Rule has been 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 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 final 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 42:1960 (November 2016).

Lorraine C. Dees
Director

1611#051

RULE

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, 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 rules have been 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 31, 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;

2. between the first Monday in February and the third Monday in February, for a position with term ending June 30, 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 31; and

2. the fourth Monday in February and the second Monday in March, for a position with term ending June 30.

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 42:1961 (November 2016).

§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 31;

2. beginning the fourth Monday of March through the second Monday of April for a position with term ending June 30:

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 31) or late May or early June (for a position with term ending June 30);

e. voted ballots shall be accepted through the fourth Monday in October at 4:30 p.m. (for a position with term ending December 31) or through the fourth Monday in April at 4:30 p.m. (for a position with term ending June 30);

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 10 (for a position with term ending December 31) and between May 1 and June 10 (for a position with term ending June 30).

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 1 of this year for a position ending December 31 and effective July 1 for a position ending June 30.

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 42:1961 (November 2016).

§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 42:1961 (November 2016).

Irwin L. Phelps
Director

1611#052

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Blue Crab Harvest (LAC 76:VII.346)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a), the Wildlife and Fisheries Commission has adopted rules that will prohibit the commercial harvest of blue crabs and the use of all crab traps during a 30-day period for the years 2017, 2018, and 2019 and restrict the commercial harvest of immature female blue crabs for the years 2017, 2018 and 2019.

All crab traps remaining in state waters during the closure period shall be presumed to be engaged in active fishing and thus considered illegal.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§346. Blue Crab Seasonal Closure and Restriction of Immature Female Harvest

A. The commercial harvest of blue crabs and the use of all crab traps are prohibited for a 30-day period beginning on the third Monday in February for the years 2017, 2018, and 2019. All crab traps remaining in state waters during the closure period shall be presumed to be engaged in active fishing and thus considered illegal.

B. There shall be no commercial harvest of immature female blue crabs for the years 2017, 2018 and 2019 except:

1. when an immature female is in the premolt stage and is being held for processing as soft crabs; or
2. sold to a processor for the making of soft crabs.

C. Obvious signs such crabs are in premolt stage shall include they are no further from molting than having a white line on the back paddle fin, which is recognized by the crab industry as a premolt stage.

D. However, a legally licensed commercial crab fisherman may have in his possession an incidental take of immature female crabs in an amount not to exceed 2 percent of the total number of crabs in his possession.

1. To determine whether the total number of crabs in possession violates this Subsection, the enforcement agent shall take:

- a. a random sample of 50 crabs from each crate; or
- b. group of crabs equivalent to one crate.

2. If more than 2 percent of the crabs in that 50-crab random sample are immature female crabs, the entire number of crabs in that crate or group of crabs equivalent to one crate shall be considered to be in violation.

E. Crabs in a work box, defined as a standard crab crate as used by a commercial crab fisherman aboard the vessel to sort or cull undersized crabs and/or immature female crabs from the harvest in order to obtain a legal catch, shall not be subject to the immature female restriction while held aboard the vessel and the fisherman is actively fishing.

1. Commercial crab fishermen shall be allowed to have in possession aboard the vessel either:

- a. one work box, if not using a grader; or
- b. two work boxes under the grader, if using a grader.

F. An immature female crab, also known as a "maiden" or "V-bottom" crab, can be identified as having a triangular shaped apron on her abdomen. A mature female crab can be identified as having a dome shaped apron on her abdomen.

G. Violation of any provision of this Section constitutes a class two violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:8, 56:32, 56:56(A)(5), 56:320(B)(3), 56:326(A)(2), 56:315, 56:332(E)(1) and 56:355.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 42:1962 (November 2016).

Bart R. Yakupzack
Chairman

1611#032

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Emerald Ash Borer Quarantine (LAC 7:XV.167)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority set forth in R.S. 3:1652, notice is hereby given that the Department of Agriculture and Forestry (“department”) intends to adopt the Rule set forth below, expanding a previously established quarantine for the following pest: emerald ash borer (“EAB”), *Agrilus planipennis* Fairmaire. This proposed Rule expands the quarantine to include Lincoln and Union Parishes.

EAB poses an imminent peril to the health and welfare of Louisiana forests, commercial and private forestry/wood product industries, and nursery growers due to its ability to infest ash trees. In 2013, the wholesale value of woody ornamental sales for nursery growers in the state was \$62.6 million, a portion of which is comprised of sales of ash trees (Louisiana State University AgCenter 2013 Louisiana Summary, Agriculture and Natural Resources). Louisiana’s forests and forestry/wood products industries generated an output industry production value of \$10.86 billion in 2012, a portion of which is comprised of ash trees and ash tree products (Louisiana State University AgCenter publication 3367-G, 2015). Sales of ash firewood by retail and wholesale suppliers to private individuals also are important to the state’s economy.

Natural spread of EAB is limited to relatively short distances. However, without restriction, EAB can spread through human-assisted means over long distances via infested ash nursery stock, ash logs/timber and cut firewood. Once an ash tree is infested, it experiences twig dieback and tree decline. Tree death occurs within a few years. Failure to prevent, control, or eradicate this pest threatens to damage Louisiana’s commercial ash tree nursery industry, and over time this pest poses a threat to destroy the majority of ash in our state, both commercial and residential. The loss of the state’s commercial nursery-grown ash trees, forestry/wood ash products and even residential ash trees would be devastating to the state’s economy and to its private citizens. The expansion of the quarantined area set forth in LAC 7:XV.167 is necessary to prevent the spread of EAB to all areas in Louisiana where ash may exist, outside of the current areas where this pest has been found.

For these reasons, the presence of EAB in Louisiana presents an imminent peril to the health, safety and welfare of Louisiana’s citizens and forests, the state’s commercial and private forestry/wood product industries, and nursery growers. As a result of this imminent peril, the Department of Agriculture and Forestry and state entomologist hereby

exercise its full and plenary power pursuant to R.S. 3:1652 to deal with crop and fruit pests and contagious and infectious crop and fruit diseases by expanding the quarantine in LAC 7:XV.167 to include Lincoln and Union Parishes.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Subchapter F. Emerald Ash Borer Quarantine

§167. Emerald Ash Borer Quarantine

A. The department issues the following quarantine because the state entomologist has determined that the insect emerald ash borer (EAB), *Agrilus planipennis*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

B. Quarantined areas in this state include:

1. the entire parishes of Bossier, Claiborne, Lincoln, Union and Webster;
2. a declaration of quarantine for EAB covering any other specific parishes or areas of this state shall be published in the official journal of the state and in the Louisiana Register.

C. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652 and 3:1653.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 41:2577 (December 2015), amended LR 43:

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 Ansel Rankins, Director of the Horticulture Commission, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 3002, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on January 4, 2017. No preamble is available.

Mike Strain, DVM
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Emerald Ash Borer Quarantine**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in additional savings or expenditures for state and local governmental units in FY 17. The proposed rule expands an existing quarantine on regulated articles that are susceptible of infestation by the emerald ash borer (“EAB”), *Agrilus planipennis* Fairmaire to include Lincoln and Union Parishes. Existing LDAF personnel in Lincoln and Union Parishes will carry out additional inspection duties as a result of the proposed rule. The additional inspections will not require additional resources and will be absorbed within LDAF’s existing appropriation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Any entities with regulated articles subject to the quarantine – such as ash nursery stock, ash logs/timber and cut firewood – in the quarantined areas will not be permitted to move those regulated articles from quarantined areas to non-quarantined areas without a certificate or limited permit issued by the LDAF. There is no fee for the certificate or permit. The only stoppages entities moving regulated articles will be able to make while moving regulated articles from non-quarantined areas will be for traffic conditions and fueling stops.

Limiting the spread of EAB will provide economic benefits to harvesters of ash logs and timber by preventing the spread of the pest to areas that are not impacted.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition and employment.

Dane Morgan
Assistant Commissioner
1611#038

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences**

Medical Marijuana (LAC 7:XLIX.Chapters 1-31)

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”), intends to adopt LAC 7:XLIX.Chapters 1-31 regarding the growing and production of medical marijuana. The proposed rules are being adopted pursuant to R.S. 40:1046. Chapter 1 of the proposed rules sets forth definitions used in the medical marijuana rules. Chapter 3 sets for the department’s authority to adopt the rules and addresses administrative matters, such as rules of construction for the proposed regulations. Chapter 5 addresses the license issued by the department to the grower and permits issued by the department to employees of the licensee. Chapter 5 includes rules regarding the form, content and information required in applications. Chapter 5 also addresses suitability standards, the ownership and transferability of the license and requires permits for employees. Chapter 7 addresses fees charged by the department to the licensee. Chapter 9 addresses compliance by the licensee and permittees and inspections by the department. Chapter 9 further sets forth a procedure for the licensee to request waivers from certain rules in emergency situations. Chapter 11 requires the licensee to establish internal controls for the production facility and sets forth the areas that must be covered by the internal controls. Chapter 13 sets forth record keeping and reporting requirements for the licensee and requires the licensee to submit an annual report to the department. The department, in turn, is required by law to submit an annual report to the legislature. Chapter 15 governs the production facility, including requiring certain areas of the facility be restricted. Chapter 15 also addresses the use of pesticides on medical marijuana plants. Chapter 17 addresses surveillance and security requirements that the licensee must follow at the production facility. Chapter 19 requires the licensee to use a tracking system for inventory. Chapter 21 addresses quality control of the medical marijuana products produced by the licensee and requires the licensee to conduct quality assurance tests. Chapter 23 sets forth the requirements for laboratory testing, including which tests must be run. Chapter 23 sets forth requirements on the licensee and its employees when transporting medical marijuana or medical marijuana infused products to laboratories, pharmacies or research facilities. Chapter 27 sets forth sanitation requirements for the production facility and provides rules for the disposal of waste. Chapter 29 addresses labeling of medical marijuana or medical marijuana infused products

and also addresses advertising by the licensee. Finally, Chapter 31 sets forth the procedures for the department to take enforcement action against the licensee.

Title 7

AGRICULTURE AND ANIMALS

Part XLIX. Medical Marijuana

Chapter 1. General Provisions

§101. Definitions

A. The provisions of the Act, R.S. 40:1046 and 1047, relating to definitions, words and terms are hereby incorporated by reference and made a part hereof and will therefore apply and govern the interpretation of these rules, unless the context otherwise requires or unless specifically redefined in a particular Section. Any word or term not defined in these rules shall have the same meaning ascribed to it in the Act. Any word not defined by the Act or these regulations shall be construed in accordance with its plain and ordinary meaning.

B. The following words and terms shall have the following meanings.

Act—R.S. 40:1046 et seq.

Applicant—any person or legal entity who has submitted an application or bid to the department for a license, permit, registration, contract, certificate or other finding of suitability or approval, or renewal thereof, authorized by the Act or rule.

Applicant Records—those records which contain information and data pertaining to an applicant's criminal record, background, and financial records, furnished to or obtained by the department from any source incidental to an investigation for licensing or permitting, findings of suitability, registration, the continuing obligation to maintain suitability, or other approval.

Application—the documentation, forms and schedules prescribed by the department upon which an applicant seeks a license, permit, registration, contract, certificate or other finding of suitability or approval, or renewal thereof, authorized by the Act or rule. Application also includes questionnaires, information, disclosure statements, financial statements, affidavits, and all documents incorporated in, attached to, or submitted by an applicant or requested by the department.

Architectural Plans and Specifications or Architectural Plans or Plans or Specifications—all of the plans, drawings, and specifications for the construction, furnishing, and equipping of the facility including, but not limited to, detailed specifications and illustrative drawings or models depicting the proposed size, layout and configuration of the production facility, including electrical and plumbing systems, engineering, structure, and aesthetic interior and exterior design as are prepared by one or more licensed professional architects and engineers.

Background Investigation—all efforts, whether prior to or subsequent to the filing of an application, designed to discover information about an applicant, affiliate, licensee, permittee, registrant, or other person required to be found suitable and includes, without time limitations, any additional or deferred efforts to fully develop the understanding of information which was provided or should have been provided or obtained during the application process.

Batch—the established segregation of a group of plants at the time of planting for the control of quantity, traceability and/or strain. A batch number will be assigned a specific unit or finite set of marijuana plants, therapeutic marijuana or therapeutic chemicals identifiable by a unique number or other unique designation, every portion or package of which is uniform, within recognized characteristics or tolerances for factors specific to the production stage. This unique identification follows each specific unit or finite set throughout growing, production, laboratory testing and product packaging and labelling.

Business Entity or Legal Entity—a natural person, a corporation, limited liability company, partnership, joint stock association, sole proprietorship, joint venture, business association, cooperative association, professional corporation or any other legal entity or organization through which business is conducted.

Consent to Administrative Supervision—a confidential legal agreement signed by the department and an individual, business, or other entity through which the violator agrees to pay for correction of violations, take the required corrective actions, or refrain from an activity while under the department's supervision.

Department—the Louisiana Department of Agriculture and Forestry.

Department Agent—any employee of the department designated by the commissioner of agriculture and forestry.

Economic Interest—any interest in a license from which a person receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest or other benefit. Economic interest includes voting shares of stock or otherwise exercising control of the day-to-day operations through a management agreement or similar contract. Economic interest does not include a debt unless upon review of the instrument, contract, or other evidence of indebtedness, the department determines a finding of suitability is required based upon the economic relationship with the licensee.

Employee Permit—the permit issued by the department authorizing a person to work for the licensee.

Financial Interest—any actual or future right to ownership, investment, or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent or child, in the licensee. Financial interest does not include ownership of investment securities in a publicly-held corporation that is traded on a national securities exchange or over-the-counter market in the United States, provided the investment securities held by the person and the person's spouse, parent or child, in the aggregate, do not exceed one percent ownership in the licensee.

Financial Statements or Financial Records—both summaries of financial matters of any sort and any source documents or records from which summaries are or may be derived. Those statements and the information contained therein which relate to balance sheets, profit and loss statements, mortgages, debt instruments, ledgers, journals, invoices, and any other document bearing on the financial status of an entity, whether historical or current.

Geographic Location—a single location in the control of a licensee, which by definition is the premises, that has

contiguous boundaries and is located within a parish in Louisiana.

Internal Controls—internal procedures and administration and accounting controls designed by the licensee for the purpose of exercising control over the licensee's operations as approved by the department.

License—the authorization by the department to produce medical marijuana and medical marijuana-infused product in accordance with the Act.

Licensed Dispensary Pharmacy or *Dispensary*—a pharmacy licensed by the Louisiana Board of Pharmacy to dispense medical marijuana-infused product.

Licensee—a person or legal entity holding the specialty license issued by the department authorizing the holder to operate a medical marijuana production facility.

Louisiana Medical Marijuana Tracking System (LMMTS)—the required seed-to-sale tracking system that tracks medical marijuana from either the seed or immature plant stage until the product is sold to a dispensary or is destroyed.

LMMTS Tracking System User—a licensee or authorized employee who is granted LMMTS user account access for the purpose of conducting inventory tracking functions in the LMMTS, who has been successfully trained by LMMTS trained administrator(s) in the proper and lawful use of LMMTS, and who has completed any additional training required by the department.

LMMTS Trained Administrator—a licensee or authorized employee who has attended and successfully completed LMMTS training and who has completed any additional training required by the department.

Medical Marijuana—substances which are identified as including any parts of the plant *Cannabis sativa*, and all derivatives or subspecies of all strains of cannabis, whether growing or not, the seeds thereof; the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC), Cannabidiol (CBD) and all other naturally occurring cannabinol derivatives, whether produced directly or indirectly by extraction. This term shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

Medical Marijuana Concentrate—a product derived from medical marijuana that is produced by extracting cannabinoids from the plant through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats; water, ice or dry ice; or butane, propane, CO₂, ethanol or isopropanol. The use of any other solvent as is expressly prohibited unless and until it is approved by the department.

Medical Marijuana-Infused Product or *Product*—a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.

Medical Marijuana Waste—medical marijuana or medical marijuana-infused product that is not usable or cannot be processed.

Monitoring—the continuous and uninterrupted video surveillance of cultivation activities and oversight for potential suspicious actions. The department or law enforcement agencies designated by the department shall have the ability to access the licensee's monitoring system in real-time via a secure web-based portal.

Permit—authorization issued from the department to a natural person to work for, or on behalf of, the licensee.

Permittee—a principle officer or board member of the licensee, or a person employed in the operation or supervision of the licensee's operation, including any individual whose employment duties directly relate to the growing, cultivating, harvesting, processing, weighing, packing, transportation and selling of product.

Permittee Identification Card—a document approved by the department that identifies a person as a production facility permittee.

Premises—land, together with all buildings, improvements, and personal property located thereon, wherein medical marijuana or product is produced.

Produce or *Production*—the growing, compounding, conversion, processing or manufacturing of medical marijuana and medical marijuana-infused product, by extraction from substances of natural origin including any packaging or repackaging of the products or the labeling or relabeling of these products or their containers.

Producer—the licensee or a person or entity under contract, memorandum of understanding, or cooperative endeavor agreement with the licensee for services to grow or produce medical marijuana and medical marijuana-infused product.

Production Facility—a permanent, secured, indoor space designed and located in one geographic location, operated solely for the production of medical marijuana and product by the licensee to perform necessary activities to provide licensed dispensary pharmacies with usable product.

Production Facility Agent-In-Charge or *Agent-In-Charge*—the production facility permittee who has been designated by the licensee to have control and management over the day to day operations of the production facility. The licensee may designate more than one agent-in-charge to cover varying operational work shifts, but may only have one per work shift as approved by the department.

Records—all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of a licensee or permit issued by the department.

Restricted Access Area—a building, room or other area in the production facility where medical marijuana is grown, cultivated, harvested, stored, weighed, packaged, sold or processed for sale to a licensed dispensary pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 3. Administrative Procedures and Authority

§301. Policy

A. It is the declared policy of the department that production of medical marijuana in Louisiana be strictly regulated and controlled through administrative rules to protect the public welfare of the inhabitants of the state of Louisiana.

B. Marijuana is classified as a schedule I controlled substance by the U.S. Department of Justice, Drug Enforcement Administration.

1. As provided by the federal Controlled Substances Act, the procurement, possession, prescribing, distribution, dispensing, or administering of any schedule I controlled substance, including marijuana, is a violation of federal law.

2. Neither Louisiana law nor these rules can preempt federal law. Therefore, the provisions of this chapter notwithstanding, persons engaged in the activities described herein remain subject to the full force of federal law enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§303. Construction of Regulations and Administrative Matters

A. Nothing contained in these regulations shall be so construed as to conflict with any provision of the Act, any other applicable statute. If any regulation is held invalid by a final order of a court of competent jurisdiction at the state or federal level, such provision shall be deemed severed and the court's finding shall not be construed to invalidate any other regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§305. Louisiana State University Agricultural Center and/or Southern University Agricultural Center is Licensee

A. These regulations, subject to any rights in the Act, intend for the term licensee to apply to Louisiana State University Agricultural Center, Southern University Agricultural Center, either separately or jointly, to any of their subordinate contractors, or to the recipient of the license pursuant to R.S. 40:1046.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 5. License and Permits

§501. Procedure for Issuing the License

A. The department shall issue the license pursuant to the Act.

B. *Louisiana Revised Statute* 40:1046 entitles the Louisiana State University Agricultural Center and the Southern University Agricultural Center the right of first refusal to be licensed as the production facility. This

entitlement carries a presumption of suitability and accordingly, the following administrative rules pertaining to licensing shall not apply to the Louisiana State University Agricultural Center and the Southern University Agricultural Center: 505, 507, 509, 513(A), 515, 517, 519(A)(3), 521, 701(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§503. General Authority of the Department

A. The department shall have the authority to call forth any person who, in their opinion, has the ability to exercise significant influence over an applicant or licensee, and such person shall be subject to all suitability requirements.

B. In the event a person is found unsuitable, then the applicant or licensee shall have no association or connection with such person.

C. The department may grant variances in writing from certain licensing requirements for Louisiana State University Agricultural Center and Southern University Agricultural Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§505. Applications in General

A. The license and any permit issued by the department is deemed to be a revocable privilege, and no person or legal entity holding such a license or permit is deemed to have acquired any vested rights therein.

B. An applicant for a license or permit authorized by the Act or rule is seeking the granting of a privilege, and the burden of proving qualification and suitability to receive the license or permit is at all times on the applicant.

C. The securing of the license, permit or approval required under the Act or these rules is a prerequisite for conducting, operating, or performing any activity regulated by the Act or these rules. Each applicant must file a complete application as prescribed by the department.

D. The filing of an application under the Act or these rules constitutes a request for a decision upon the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with the licensee or permittee. By filing an application, the applicant specifically consents to the making of such a decision by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§507. Investigations; Scope

A. The department shall investigate all applications for the license or permit or other matters requiring department approval. The department may investigate, without limitation, the background of the applicant, the suitability of the applicant, the suitability of the applicant's finances, the applicant's business integrity, the suitability of the proposed premises for the facility, the suitability of a person with an ownership or economic interest in the applicant for a license of 5 percent or more, the suitability of any person who in the

opinion of the department has the ability to exercise significant influence over the activities of an applicant for a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§509. Ownership of License and Permits

A. The license and all permits issued by the department as provided in the Act or by rule, are and shall remain the property of the department at all times.

B. The license shall be issued in the name of the licensee. One license will be issued even though multiple individuals may file or be required to file applications related thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§511. Transfer of License or Permits

A. The license and all permits are not transferable or assignable. If the status of the licensee or permittee should change such that the person no longer needs or is entitled to the license or permit, then the license or permit shall be cancelled and any tangible item which evidences such a license or permit shall be surrendered to the department within five days of the change of status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§513. Eligibility Suitability Standards

A. No person shall be eligible to apply for the license unless he meets all of the following requirements:

1. is in compliance with all requirements provided by the act; and

2. is properly registered and in good standing with the Louisiana Secretary of State and Department of Revenue.

B. No person shall be eligible to obtain a license or permit or obtain any other approval pursuant to the provisions of the Act or these rules unless the applicant has demonstrated by clear and convincing evidence to the department, where applicable, that he is suitable. Suitable means the applicant, licensee, permittee, or other person is:

1. a person of good character, honesty, and integrity;

2. a person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of the production of medical marijuana or product or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the production of medical marijuana or product or carrying on of the business and financial arrangements incidental thereto;

3. capable of and likely to conduct the activities for which the applicant, licensee, permittee, is licensed, permitted, or approved pursuant to the provisions of the Act or these rules; and

4. not disqualified pursuant to the provisions of Subsection B of this Section.

C. The department, where applicable, shall not grant a license or permit, or issue any other approval pursuant to the provisions of the Act or these rules to any person who is disqualified on the basis of the following criteria:

1. the conviction or a plea of guilty or nolo contendere by the applicant or any person required to be suitable under the provisions of the Act or these rules for any of the following:

a. any offense punishable by imprisonment of more than one year;

b. theft or attempted theft, illegal possession of stolen things, or any offense or attempt involving the misappropriation of property or funds;

c. any offense involving fraud or attempted fraud, false statements or declarations;

d. a crime of violence as defined in R.S.14:2(B); and

e. any offense involving schedule I narcotics;

2. there is a current prosecution or pending charge against the person in any jurisdiction for any offense listed in Paragraph 1 of this Subsection; and

3. the failure to provide information and documentation to reveal any fact material to a suitability determination, or the supplying of information which is untrue or misleading as to a material fact pertaining to the suitability criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§515. Suitability Determination

A. An applicant and officers, directors, and any person having a 5 percent or more economic interest in the licensee shall be required to submit to an investigation to determine suitability.

B. Any person, who in the opinion of the department, has the ability to exercise significant influence over the activities of an applicant for license or licensee shall be required to submit to an investigation to determine suitability.

C. All costs associated with conducting an investigation for suitability shall be borne by the applicant, licensee, or permittee or the person who is the subject of the investigation.

D. Failure to submit to a suitability determination as required by this Section may constitute grounds for delaying consideration of the application or for denial of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§517. Form of Application

A. An application for a license, permit, or finding of suitability shall be filed by way of forms prescribed by and obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§519. Information Required from an Applicant for a License

A. An application for the license shall contain the following information including but not limited to:

1. information required by the Act;
2. one copy of detailed plans of design of the facility, including the projected use of each area;
3. an estimated timetable for the proposed financing arrangements through completion of construction;
4. the construction schedule proposed for completion of the production facility including therein projected dates for completion of construction and commencement of operations and indicating whether the construction contract includes a performance bond;
5. explanation and identification of the source or sources of funds for the construction of the facility;
6. description of the production facility size;
7. a detailed plan of surveillance and surveillance equipment to be installed;
8. proposed hours of operation;
9. the proposed management plan, management personnel by function and organizational chart by position; and
10. a list of employees which the applicant anticipates employing in the production facility operation, including job classifications.

B. An applicant for the license shall provide a copy of proposed internal controls which shall include:

1. accounting and financial controls including procedures to be utilized in counting, banking, storage and handling of cash;
2. job descriptions and the systems of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in production facility operations and identifying primary and secondary supervisor positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;
3. procedures for the inventory control and tracking, security, storage, and recordation of inventory; and
4. procedures and security standards for total operation of the facility.

C. In addition, the department may require an applicant to provide such other information and details as it needs to discharge its duties properly.

D. Failure to comply with the provisions of this Section may constitute grounds for delaying consideration or for denial of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§521. Fingerprinting

A. An initial application is not complete unless all persons required by the department have submitted to fingerprinting at the direction of the department.

B. Failure to submit to fingerprinting may constitute grounds for delaying consideration of the application or for denial of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§523. Employee Permits Required

A. A person employed in the operation or supervision of the licensee's operation including any individual whose employment duties require or authorize access to the premises on a regular basis, or a principle officer or board member of the licensee, shall be permitted by the department annually. A permit is valid for one year from the date of issuance.

B. The licensee shall not employ an individual in a capacity which requires an employee permit unless such individual is the holder of a valid employee permit issued by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§525. Display of Identification Badge

A. Every employee required to be permitted shall be issued a permittee identification badge, which shall be on his person and displayed at all times when on the production facility premises or when transporting product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§527. Permit Renewal Applications

A. Applications for renewal of permits shall be made in such a manner and by way of forms prescribed by the department and shall contain all information requested by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 7. Fees

§701. Fees

A. The license fee of \$100,000 shall be payable to the department upon issuance of the license and annually thereafter.

B. The fee for a permit shall be \$100 annually.

C. A fee of 7 percent of gross sales shall be paid quarterly to the department.

D. All fees collected by the department shall be used to fund expenses relating to the regulation and control of the medical marijuana program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 9. Compliance and Inspections

§901. Applicability and Resources

A. This Chapter is applicable to inspections relative to compliance with the Act and the rules. The department is empowered to employ such personnel as may be necessary for such inspections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§903. Code of Conduct of Licensee and Permittees

A. General provisions:

1. all licensees and permittees shall comply with all applicable federal, state, and local laws and regulations. For purposes of this Chapter, applicable federal law shall not mean the growing, sale, possession, or distribution of medical marijuana; and

2. all notifications to the department required by this Section shall be in writing.

B. Unsuitable conduct:

1. a licensee or permittee shall not engage in unsuitable conduct or practices and shall not employ or have a business association with any person, natural or juridical, that engages in unsuitable conduct or practices; and

2. for purposes of this Section, unsuitable conduct or practices shall include, but not be limited to, the following:

a. employment of, in a managerial or other significant capacity as determined by the department, business association with, or participation in any enterprise or business with a person disqualified pursuant to Section 513 of Chapter 5 of these rules or declared unsuitable by the department;

b. failure to provide information or documentation of any material fact or information to the department;

c. misrepresentation of any material fact or information to the department;

d. engaging in, furtherance of, or profit from any illegal activity or practice, or any violation of these rules or the Act;

e. obstructing or impeding the lawful activities of the department; or

f. persistent or repeated failure to pay amounts due or to be remitted to the state;

3. the licensee or permittee shall not engage in, participate in, facilitate, or assist another person in any violation of these rules or the Act; or

4. any person required to be found suitable or approved in connection with the license, or permitted by the department, shall have a continuing duty to notify the department of his arrest, summons, citation or charge for any criminal offense or violation that would deem him unsuitable in accordance with these rules. The notification required by this Paragraph shall be made within 15 calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

C. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee. Willful or persistent use or toleration of methods of operation deemed unsuitable is cause for administrative action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§905. Compliance with Laws

A. Acceptance of a license or permit or renewal thereof constitutes an agreement on the part of the licensee or

permittee to be bound by all of the applicable provisions of the Act and the regulations. It is the responsibility of the licensee or permittee to keep informed of the content of all such laws, and ignorance thereof shall not excuse violations. Violation of any applicable provision of the Act or the rules by a licensee or its agent, or permittee, employee or representative, is contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the state of Louisiana and constitutes cause for administrative action.

B. In the event the licensee subcontracts services in the production of medical marijuana or product, the subcontractor's acts or omissions shall be considered the acts or omissions of the licensee. All obligations, duties, and responsibilities imposed on the licensee by these regulations shall be the obligations, duties and responsibilities of the subcontractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§907. Inspections and Observations

A. The department and its representatives shall have complete, immediate and unrestricted access at all times and without notice or demand to the licensee, permittee or any other person, to enter and:

1. inspect the entire production facility and its ancillary facilities, including all restricted areas;

2. observe production activities; or

3. observe the transportation of product.

B. A licensee shall, upon request, immediately make available for inspection by the department all papers, documents, books and records used in the licensed operations.

C. Such inspections and observations may or may not be made known to the licensee.

D. All requests for access to the production facility and production of records and documents in connection with any inspection shall be granted in accordance with the provisions of the Act and these regulations.

E. In conducting an inspection, the department is empowered to:

1. inspect and examine the entire production facility wherein production activities are conducted or proposed to be conducted, wherein inventory, equipment or supplies are maintained, and wherein all papers, books, records, documents and electronically stored media are maintained;

2. summarily seize and remove product, inventory, supplies, and equipment from such premises for the purpose of examination and inspection;

3. have access to inspect, examine, photocopy and, if necessary seize all papers, books, records, documents, information and electronically stored media of an applicant, licensee, or permittee pertaining to the licensed operation or activity, on all premises where such information is maintained;

4. review all papers, books, records, and documents pertaining to the licensed operation; and

5. conduct audits to determine compliance with all laws, rules and operations authorized by the Act under the department's jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§909. Production Facility Agent-In-Charge

A. The licensee shall designate a permittee as production facility agent-in-charge. A production facility agent-in-charge shall be on the licensee's premises during hours of operation and shall have authority to immediately act in any matter or concern of the department. A description of the duties and responsibilities of the production facility agent-in-charge shall be included in the written system of internal controls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§911. Waivers and Authorizations

A. All requests to the department for waivers, approvals, or authorizations, except matters concerning emergency situations, shall be submitted in writing no less than 30 days prior to the licensee's planned implementation date, unless a shorter time is approved by the department.

B. No waiver, approval, or authorization is valid until such time as the licensee receives written authorization from the department.

C. The department, in its sole discretion, may determine what constitutes an emergency situation. Such determinations will be made on a case-by-case basis.

D. A licensee shall adhere to all the requirements and provisions of the authorization. Violation of the terms of a written authorization may be cause for administrative action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 11. Internal Controls

§1101. Internal Control for Production Facility

A. The licensee shall establish administrative and accounting procedures for the purpose of exercising effective control over the licensee's internal fiscal affairs. The procedures must be designed to reasonably ensure that:

1. assets are safeguarded;
2. financial records are accurate and reliable;
3. transactions are performed only in accordance with management's general or specific authorization;
4. transactions are recorded adequately to permit proper reporting of sales and maintain accountability for inventory and assets;
5. access to assets is permitted only in accordance with management's specific authorization; and
6. functions, duties, and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified personnel.

B. The licensee shall describe, in such manner as the department may approve or require, its administrative and accounting procedures in detail in a written system of internal control. The licensee shall submit for approval a copy of its written system to the department. Each written system shall include:

1. an organizational chart depicting segregation of functions and responsibilities;

2. a description of the duties and responsibilities of each position shown on the organizational chart;

3. a detailed, narrative description of the administrative, accounting, and operational procedures designed to satisfy the requirements of Subsection A. This description shall address operational and management practices, including but not limited to:

- a. record keeping;
- b. security measures to deter and prevent theft of medical marijuana and product;
- c. authorized entrance into areas containing medical marijuana or product;
- d. types and quantities of medical marijuana or products that are produced at the manufacturing facility;
- e. methods of planting, harvesting, drying, batching, and storage of medical marijuana;
- f. estimated quantity of all crop inputs used in production;
- g. estimated quantity of waste material to be generated;
- h. disposal methods for all waste materials;
- i. inventory storage procedures;
- j. employee training methods for the specific phases of production;
- k. biosecurity measures used in production and manufacturing;
 - l. strategies for reconciling discrepancies in plant material, medical marijuana or product;
 - m. sampling strategy and quality testing for labeling purposes;
 - n. medical marijuana and product packaging and labeling procedures;
 - o. procedures for the mandatory and voluntary recall of medical marijuana and product;
 - p. plans for responding to a security breach at a production facility, or while medical marijuana or product is in transit to another approved facility;
 - q. business continuity plan;
 - r. procedures and records relating to all transport activities; and
 - s. other information requested by the department;

4. a written statement signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner attesting that the system satisfies the requirements of this Section; and

5. such other items as the department may require.

C. The licensee's system of internal control procedures shall meet, at a minimum, the requirements set forth in the Act and administrative rules. If the department determines that a licensee's administrative or accounting procedures or its written system does not meet the standards, the department shall so notify the licensee in writing. Within 30 days after receiving the notification, the licensee shall amend its procedures and written system accordingly, and shall submit a copy of the written system as amended and a description of any other remedial measures taken.

D. The licensee shall promptly report any amendments to the licensee's system of internal control procedures. The report must include either a copy of the written system of

internal control procedures as amended or a copy of each amended page of the written system of internal control procedures, and a written description of the amendments signed by the licensee's chief financial officer. The department may also request the licensee to submit a copy of the written system of internal control procedures at any time.

E. The licensee shall comply with its written system of internal control procedures submitted pursuant to Subsection B as it relates to compliance with the requirements set forth in these regulations. Failure to comply is an unsuitable method of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1103. Application Control

A. The licensee shall establish application control procedures for the purpose of exercising effective control over the licensee's management information systems to include the LMMTS, and to provide for a stable operation of the IT environment. The licensee shall comply with its system of application control as it relates to compliance with the requirements set forth in these regulations. The application procedures shall include a business continuity plan, an organizational chart depicting segregation of functions and responsibilities, and a description of the duties and responsibilities of each position shown on the organizational chart.

B. The procedures must be designed to reasonably ensure that:

1. information is safeguarded and logically secured through the use of passwords, biometrics, or other means as approved by the department;

2. electronic records are accurate and reliable;

3. controls assure the accuracy of the data input, the integrity of the processing performed, and the verification and distribution of the output generated by the system. Examples of these controls include:

a. proper authorization prior to data input, for example, passwords;

b. use of parameters or reasonableness checks; and

c. use of control totals on reports and comparison of them to amounts input;

4. transactions are performed only in accordance with control procedures; and

5. transactions are recorded adequately to permit proper reporting of data, and to maintain accountability for processing tracking, inventory, sales, and assets.

C. Data server equipment and system storage shall be housed in a secured environment equipped with a non-water based fire suppression system, redundant power supply and UPS battery backup, redundant HVAC system, and protected by surveillance and security alarm systems. Only authorized personnel shall have physical access to the computer software and hardware.

D. Backup and recovery:

1. the licensee shall perform a backup to the system data daily. Backup and recovery procedures shall be written and distributed to all applicable personnel. These policies shall include information and procedures, which includes, at a minimum, a description of the system and system

manual(s) that ensure the timely restoration of data in order to resume operations after a hardware or software failure;

2. the licensee shall maintain copies of system-generated edit reports, exception reports and transaction logs for a minimum of five years; and

3. the licensee shall maintain either printed or electronic copies of system-generated edit reports, exception reports, and transaction logs.

E. Access to software and hardware:

1. the licensee shall establish security groups based on job requirements and access level of employees. This information shall be maintained by the licensee and include the employee's name, position, identification number, and the date authorization is granted. These files shall be updated as employees or the functions they perform change;

2. the licensee shall print and review the computer security access report monthly. Discrepancies shall be investigated, documented, and maintained for five years;

3. only authorized personnel shall have physical access to the computer software and hardware;

4. all changes to the system and the name of the individual who made the change shall be documented; and

5. reports and other output generated by the system shall be available and distributed to authorized personnel only.

F. Computer records:

1. at a minimum, the licensee shall generate, review, document this review, and maintain reports on a daily basis for the respective system(s) utilized in their operation.

G. The licensee may not implement application control procedures that do not satisfy the requirements set forth in these regulations unless the department approves otherwise in writing. If the department determines that the licensee's application control procedures do not comply with the requirements of the Act or administrative rules, the department shall so notify the licensee in writing. Within 30 days after receiving the notification, the licensee shall amend its application controls, and shall submit a copy of the amended application controls and a description of any other remedial measures taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 13. Reporting and Record Keeping

§1301. Reporting and Record Keeping

A. The licensee shall keep and maintain all of the true, accurate, complete, legible and current books upon the licensed premises for a five-year period and made available for inspection if requested by the department. Electronic records may be maintained in other locations if access to the records is available on computers located at the production facility or other location approved by the department.

B. The licensee shall conduct a complete system data backup to an off-site location a minimum of once a month. For purposes of this Section, the licensee shall submit the name, location, and security controls of the off-site storage facility to the department.

C. The licensee shall have a written contingency plan in the event of a system failure or other event resulting in the loss of system data. The plan shall address backup and

recovery procedures and shall be sufficiently detailed to ensure the timely restoration of data in order to resume operations after a hardware or software failure or other event that results in the loss of data.

D. The licensee is responsible for keeping and maintaining all of the production facility's records that clearly reflect all financial transactions and the financial condition of the business. The following records shall be kept and maintained on the licensed premises for a five-year period and shall be made available for inspection if requested by the department:

1. purchase invoices, bills of lading, manifests, sales records, copies of bills of sale and any supporting documents, including the items and/or services purchased, from whom the items were purchased, and the date of purchase;

2. bank statements and cancelled checks for all accounts relating to the production facility;

3. accounting and tax records related to the production facility and each producer backer;

4. records of all financial transactions related to the production facility, including contracts and/or agreements for services performed or received that relate to the production facility;

5. all permittee records, including training, education, discipline, etc.;

6. soil amendment, fertilizers, pesticides, or other crop production aids applied to the growing medium or plants or used in the process of growing medical marijuana;

7. production records, including:
 - a. planting, harvest and curing, weighing, destruction of medical marijuana, creating batches of products, and packaging and labeling; and

- b. disposal of medical marijuana, products and waste materials associated with production;

8. records of each batch of medical marijuana concentrate or products made, including, at a minimum, the usable medical marijuana or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced;

9. transportation records;

10. inventory records;

11. records of all samples sent to an independent testing lab and/or the department's lab and the quality assurance test results;

12. all samples provided to anyone or any entity for any purpose; and

13. records of any theft, loss or other unaccountability of any medical marijuana seedlings, clones, plants, trim or other plant material, extracts, products, or other items containing medical marijuana.

E. The records required by this section shall include the following:

1. the amount of plants being grown at the production facility on a daily basis;

2. the quantity and form of medical marijuana and product maintained at the production facility on a daily basis;

3. the date of each sale, transporting or disposing of any product;

4. the name, address and registration number of the dispensary facility to which the product was sold;

5. the item number, product name (description), and quantity of products registered by the department and sold or otherwise distributed to the dispensary;

6. the name of the dispensary facility and dispensary employee who took custody of the product;

7. the price charged and the amount received for the products from the dispensary;

8. name of production facility employee(s) transporting the product; and

9. if the distribution was for a purpose other than sale, the reason for the distribution.

F. A record of all approved products that have been distributed shall be filed electronically with the department, utilizing a transmission format acceptable to the department, not later than 24 hours after the product was transported to a dispensary or disposed of by the production facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1303. Annual Report

A. The licensee shall prepare an annual report detailing all of the following:

1. the amount of gross medical marijuana and product produced by the licensee during each calendar year;

2. the details of all production costs including but not limited to seed, fertilizer, labor, advisory services, construction, and irrigation;

3. the details of any items or services for which the licensee subcontracted and the costs of each subcontractor directly or indirectly working for the contractor;

4. the amount of products produced resulting from the medical marijuana grown;

5. the amounts paid each year to the licensee related to the licensee's production of medical marijuana and product; and

6. the amount of medical marijuana and product distributed to each pharmacy licensed to dispense medical marijuana in this state during each calendar year.

B. The report shall cover the previous calendar year and be received by the department no later than January 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 15. Production Facility

§1501. Production Facility and Areas

A. The production facility shall be compartmentalized based on function, and access shall be restricted between areas or compartments. The licensee shall develop, establish, maintain and comply with its written system of internal controls approved by the department regarding best practices for the secure and proper production of medical marijuana or products. These practices shall include, but not be limited to, policies and procedures that:

1. restrict movement between production areas or compartments;

2. ensure that only those personnel necessary for a production function have access to that area or compartment of the production facility;

3. require pocket-less clothing for all production facility employees working in an area containing medical marijuana or products;

4. document the chain of custody of all medical marijuana or products;

5. require the storage of all medical marijuana or products in the process of production, manufacture, distribution, transfer, or analysis in such a manner as to prevent diversion, theft or loss;

6. make all medical marijuana or products accessible only to the minimum number of specifically authorized employees essential for efficient operation;

7. require the return of all medical marijuana or products to their designated, secure locations immediately after completion of the process or at the end of the scheduled business day. If a production process cannot be completed at the end of a working day, the licensee shall securely lock the medical marijuana or products, or tanks, vessels, bins, or bulk containers containing any such materials inside a processing area or compartment that affords adequate security;

8. address mandatory and voluntary recalls of medical marijuana or products in a manner that adequately deals with recalls due to any action initiated at the request of the department and any voluntary action by the licensee to remove defective or potentially defective products from the market, or any action undertaken to promote public health and safety by replacing existing medical marijuana or products with improved products or packaging; and

9. prepare for, protect against, and handle any crises that affect the security or operation of the production facility in the event of fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

B. Each production area or compartment within a production facility shall:

1. develop, establish, maintain and comply with policies and procedures contained in the written system of internal controls for each production area, as approved by the department;

2. be maintained free of debris and kept clean and orderly;

3. be kept free from infestation by insects, rodents, birds or vermin of any kind, including the use of adequate screening or other protection against the entry of pests;

4. implement and maintain biosecurity measures at all times;

5. allow access on all sides of each medical marijuana plant group to allow for unobstructed movement of personnel and materials, for plant observation and for inventory of each plant group;

6. maintain production and storage areas, including areas where equipment or utensils are cleaned, with adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions for the production of medical marijuana or products;

7. prevent the growth of undesirable microorganisms that can occur on medical marijuana plants by holding the plants in a manner that prevents such growth;

8. move medical marijuana or products that are outdated, damaged, deteriorated, misbranded or adulterated, or whose containers or packaging have been opened or breached, into a separate storage room, in a quarantined area, until the medical marijuana or products are destroyed pursuant to Chapter 27;

9. ensure that the oldest stock of medical marijuana or products is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate;

10. not produce any products other than medical marijuana or products;

11. maintain a record of all crop inputs for at least five years at the production facility. The record shall include the following (see Section 1507 for additional requirements for the use of pesticides):

a. the date of crop input application;

b. the name and title of the individual making the application;

c. the product that was applied;

d. the section, including the square footage, that received the application (by group designation or number);

e. the amount of product that was applied; and

f. a copy of the label of the product applied;

12. hold and store toxic cleaning compounds, sanitizing agents, solvents used in the production of any products, and pesticide chemicals in a manner that protects against contamination of medical marijuana or products, and in a manner that is in accordance with any applicable local, State or federal law, rule, regulation or ordinance;

13. ensure that the water supply to the production areas or compartments is sufficient for the operations intended and is derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable and adequate supply of water to meet the production facility's needs (see Chapter 27); and

14. ensure that plumbing complies with all applicable plumbing codes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1503. Age Restrictions

A. No persons under the age of 21 shall:

1. enter any restricted area of the facility; or

2. be licensed or permitted by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1505. Restricted Areas

A. Only permittees as provided in these rules, or in the internal controls may enter restricted areas. The licensee shall implement procedures to ensure compliance with this Section.

B. All non-permitted employees and visitors shall be accompanied by an authorized permittee.

C. All access to the production area of the facility, any area where product is located, and the vault shall be

documented on a log maintained by the licensee. The logs shall contain entries with the following information:

1. the identity of each person entering the restricted area;

2. for non-permitted employees and visitors authorized by the department, the reason each person entered the restricted area;

3. the date and time each person enters and exits the restricted area;

4. a description of any unusual events occurring in the restricted area; and

5. such other information required in the internal controls.

D. The logs shall be made available to the department upon request.

E. Only transparent trash bags shall be utilized in restricted areas.

F. All authorized persons working in any restricted area when product is present shall wear clothing without any pockets or other compartments, unless otherwise authorized by the department.

G. Employees shall not bring purses, handbags, briefcases, bags or any other similar item into the restricted area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1507. Pesticide Usage on Medical Marijuana Plants

A. Only pesticides approved by the department may be applied by the licensee to the medical marijuana plant. The department's approved pesticide list shall be published in the Potpourri section of the *Louisiana Register* and on the department's website. Updates to the approved list shall be posted in the same manner.

B. All pesticide products shall be registered with the department, including those products classified by the United States Environmental Protection Agency as 25(b) "minimum risk" products.

C. No application of pesticides shall be made after the budding/flowering of the cannabis plant.

D. All permittees applying pesticides shall adhere fully to product label requirements and shall employ all personal protective equipment prescribed by the label.

E. A record of all pesticide applications shall be maintained at the production facility for at least five years and shall be made available to the department. The application record shall include the following information:

1. owner/operator name, address, and license number;

2. certified applicator, name, address and certification number;

3. product/brand name;

4. LDAF product registration number (if applicable);

5. application date;

6. crop/type of application;

7. location of application;

8. size of area treated acres, square feet, or minutes of spraying;

9. rate of application;

10. total amount of pesticide product (concentrate) applied; and

11. applicator name (working under the supervision of a certified applicator).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 17. Surveillance and Security

§1701. Required Surveillance Equipment

A. The licensee shall install a surveillance system on the entire premises which meets or exceeds specifications established by the department and provide access to the department at all times.

B. Cameras, as approved by the department, shall monitor in detail, from various vantage points, the following:

1. the entire premises to include all areas within and outside the production facility excluding restrooms and private offices where product is not located;

2. the movement of medical marijuana and product on the premises;

3. the entrance and exits to the production facility;

4. inside of the vault area and restricted areas; and

5. such other areas as designated by the department.

C. All cameras shall be equipped with lenses of sufficient magnification to allow the operator to clearly distinguish product identifiers and ID tags.

D. All date and time generators shall be based on a synchronized, central or master clock, recorded and visible on any monitor when recorded.

E. The surveillance system and power wiring shall be tamper resistant.

F. The system shall be supplemented with a back-up gas or diesel generator power source which is automatically engaged in case of a power outage and capable of returning to full power within 7 to 10 seconds.

G. The system shall have an additional uninterrupted power supply system so that time and date generators remain active and accurate.

H. Video switchers shall be capable of both manual and automatic sequential switching for the appropriate cameras.

I. Recorders, as approved by the department, shall be capable of producing high quality first generation pictures and recording with high speed scanning and flicker-less playback capabilities in real time, or other medium approved by the department. Such recorders must possess time and date insertion capabilities for recording what is being viewed by any camera in the system.

J. The system shall have audio capability in certain areas as required by the department.

K. The facility shall have adequate lighting in all areas where camera coverage is required. The lighting shall be of sufficient intensity to produce clear recording and still picture production, and correct color correction where color camera recording is required. The video must demonstrate a clear picture, in existing light under normal operating conditions.

L. Adequate back-up replacement equipment shall be maintained on the premises to ensure prompt replacement in the event of failure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1703. Surveillance System Plans

A. The licensee shall submit to the department for approval a surveillance system plan prior to the commencement of operations. The surveillance system plan shall include a floor plan indicating the placement of all surveillance equipment and a detailed description of the surveillance system and its equipment. The plan shall also include a detailed description of the configuration of the monitoring equipment. The plan may include other information that evidences compliance with this Subsection by the licensee including, but not limited to, a configuration detailing the location of all production equipment.

B. Any changes to the surveillance system shall require prior approval by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1705. Surveillance Personnel Employment Provisions

A. The licensee shall designate at a minimum one permittee responsible in the use, monitoring, and administration of the surveillance system. This employee is prohibited from having duties in the production process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1707. Storage and Retrieval

A. All video recordings shall be retained for at least thirty days, unless otherwise provided for in these rules or required by the department.

B. Any video recording of illegal or suspected illegal activity shall, upon completion of the recording, be duplicated and the copy shall be preserved until the department notifies the licensee otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1709. Security Plan Requirements

A. The licensee shall submit to the department a security plan prior to commencement of operations to include, at a minimum, the following:

1. a detailed description of all security solutions for the facility and transportation of product to and from the facility to be implemented by the licensee;

2. security training requirements and procedures; and

3. other information required by the department that evidences compliance with the Act and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1711. Security Alarm System

A. The licensee shall install and maintain in good working order a professionally installed and monitored security alarm system as approved by the department. This

system shall provide intrusion and fire detection for all buildings and areas within the premises. The alarm system shall be able to operate in the event of a power outage.

B. The security system shall be able to summon law enforcement personnel during, or as a result of, an alarm condition. The security system must be equipped with the following components or features:

1. motion detectors;

2. a duress alarm

3. a panic alarm;

4. a holdup alarm;

5. an automatic voice dialer; and

6. a failure alert system that provides an audio, text, or visual notification of any failure in the alarm system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1713. Security of Premises and Production Facility

A. The licensee shall:

1. erect fencing or other barriers as approved by the department of adequate type and height to prevent unauthorized persons from entering the premises. Ingress and egress to the premises shall be controlled by use of a gate or other approved device;

2. install locks or locking mechanisms of adequate type to securely lock and protect the premises and production facility from unauthorized entry at all times. The licensee shall safeguard all keys, combinations, passwords, and other security sensitive measures in a manner that prevents accessibility from unauthorized persons;

3. install exterior lighting sufficient to illuminate all areas of the premises to facilitate surveillance and deter unauthorized activity;

4. load the medical marijuana or product for transportation to dispensaries in a locked, secured area within the perimeter protected by fence or other approved barrier. This area shall be considered a restricted area obscured from public view; and

5. post a sign at all entryways into the premises and production facility which shall be a minimum of 12 inches in height and 12 inches in width which shall state: "DO NOT ENTER—RESTRICTED ACCESS AREA—ACCESS LIMITED TO AUTHORIZED PERSONNEL ONLY", or other wording approved by the department. The lettering shall be no smaller than one-half inch in height.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1715. Security Log/Notification/Reports

A. The licensee shall maintain a security log of all visitors to the production facility and unusual incidents. Each incident without regard to materiality shall be entered in the log containing, at a minimum, the following information:

1. the assignment number;

2. the date;

3. the time;

4. the description of the incident;

5. the person involved in the incident; and

6. the permittee assigned.

B. The security logs required by this Section shall be retained and stored by month and year.

C. The licensee or its employees shall provide immediate notification to the department of knowledge of any theft of medical marijuana or product, or violation of the Act, or these rules.

D. The licensee shall compile a written report to be promptly filed with the department on any incident in which the licensee has knowledge of, or reasonable suspicion of a violation of the Act, these rules, or its system of internal controls has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 19. Inventory

§1901. Medical Marijuana Inventory; Inventory Tracking System Required

A. The licensee shall provide a reliable and ongoing supply of medical marijuana as required by R.S. 40:1046(C)(2)(D).

B. The licensee shall establish inventory controls and procedures for conducting inventory reviews and comprehensive inventories of plant material, medical marijuana, and product to prevent and detect any diversion, theft, or loss in a timely manner.

C. The licensee shall maintain a record of its inventory of all medical marijuana waste, product waste, and plant material waste for disposal.

D. The licensee shall be required to use the LMMTS as the primary inventory tracking system of record. The system and all use thereof shall conform to the requirements set forth in Section 1903 and Chapter 19.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1903. General Inventory Tracking System Use

A. All inventory tracking activities by the licensee shall be tracked through use of the LMMTS. The licensee shall reconcile all on-premises and in-transit medical marijuana and product inventories each day in the LMMTS at the close of business.

B. Common weights and measures:

1. the licensee shall utilize a standard of measurement that is supported by the LMMTS to track all medical marijuana and product;

2. a scale used to weigh such product prior to entry into the LMMTS shall be tested and approved in accordance with R.S. 3:4601 et seq.

C. LMMTS administrator and user accounts, security and record:

1. the licensee is accountable for all actions permittees take while logged into the LMMTS or otherwise conducting medical marijuana or product inventory tracking activities; and

2. Each individual user is also accountable for all of his or her actions while logged into the LMMTS or otherwise conducting medical marijuana or product

inventory tracking activities, and must maintain compliance with all relevant laws and rules.

D. Secondary software systems allowed:

1. nothing in this rule prohibits the licensee from using separate software applications to collect information to be used by the business including secondary inventory tracking or point of sale systems; and

2. a licensee shall ensure that all relevant LMMTS data is accurately transferred to and from the LMMTS for the purpose of reconciliations with any secondary systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1905. Inventory Tracking System Access

A. The licensee shall have at least one individual permittee who is a LMMTS administrator. The licensee may also designate additional permittees to obtain LMMTS administrator accounts in accordance with internal controls.

B. In order to obtain a LMMTS administrator account, a person must attend and successfully complete all required LMMTS training. The department may also require additional ongoing, continuing education for an individual to retain his or her LMMTS administrator account.

C. The licensee may designate permittees who hold a valid employee permit as a LMMTS User. The licensee shall ensure that all permittees who are granted LMMTS user account access for the purposes of conducting inventory tracking functions in the system are trained by LMMTS administrators in the proper and lawful use of LMMTS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1907. ID Tags Required

A. The licensee shall be responsible to ensure its inventories are properly tagged where the LMMTS requires ID tag use. The licensee must ensure it has an adequate supply of ID tags to properly identify medical marijuana and product as required by the LMMTS.

B. The licensee is responsible for the cost of all ID tags and any associated fees as approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1909. Conduct While Using Inventory Tracking System

A. The licensee and its designated LMMTS administrators and LMMTS users shall enter data into the LMMTS that fully and transparently accounts for all inventory tracking activities. Both the licensee and the permittees using the LMMTS are responsible for the accuracy of all information entered into the LMMTS. Any misstatements or omissions may be considered a violation of these rules.

B. Individuals entering data into the LMMTS shall only use that individual's LMMTS account.

C. If at any time the licensee loses access to the LMMTS for any reason, the licensee shall keep and maintain

comprehensive records detailing all medical marijuana and medical marijuana-infused product tracking inventory activities that were conducted during the loss of access. See Section 1301, Reporting and Record Keeping. Once access is restored, all medical marijuana and product inventory tracking activities that occurred during the loss of access shall be entered into the LMMTS. The licensee must document when access to the system was lost and when it was restored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§1911. System Notifications

A. The licensee shall monitor all compliance notifications from the LMMTS. The licensee shall resolve the issues detailed in the compliance notification in a timely fashion. Compliance notifications shall not be dismissed in the LMMTS until the licensee resolves the compliance issues detailed in the notification.

B. The licensee shall take appropriate action in response to informational notifications received through the LMMTS, including but not limited to notifications related to ID billing, enforcement alerts, and other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 21. Quality Control/ Assurance Program

§2101. Quality Control

A. The licensee shall develop and implement a written quality assurance program for determining necessary storage conditions and shelf life for both medical marijuana concentrates and products:

1. the quality assurance program shall include procedures to be followed if the mandated testing described in Chapter 23 indicates contamination or non-homogenous products;

2. any area within the production facility where medical marijuana will be produced into an edible form shall comply with the Louisiana state food, drug and cosmetic law (R.S. 40:601) et seq.;

3. no products requiring refrigeration or hot-holding shall be manufactured at a production facility for sale or distribution to a dispensary due to the potential for food-borne illness.

B. the licensee shall develop and follow written procedures determining storage conditions and establishing shelf life for each product type such that:

1. samples are collected in a manner that provides analytically sound and representative samples;

2. sample size and test intervals are based on statistical criteria for each attribute examined to ensure valid stability estimates;

3. samples are labeled with the unique batch identifier;

4. samples are tested at a minimum for both potency and microbiological contamination against the limits set forth in Chapter 23;

5. storage conditions do not involve refrigeration, heating, or specialized ventilation systems;

6. the same container-closure system in which the product is dispensed at point of sale is used during the shelf life testing; and

7. the documentation supporting required storage conditions and shelf life determinations are retained for at least five years.

C. The licensee shall develop and follow written procedures for responding to mandated testing results indicating contamination of any kind including:

1. documenting the destruction of the contaminated medical marijuana or product as described in Chapter 14;

2. determining the source of the contamination;

3. documentation of the elimination of the source of contamination; and

4. retention of all documents involved in the incident for at least five years.

D. The licensee shall bear any and all costs incurred in determining the shelf life, the storage conditions and the activities necessary to respond to findings of contamination or non-homogeneity.

E. If shelf life studies have not been completed, the licensee may assign a tentative expiration date based on any available stability information. The licensee shall concurrently conduct shelf life studies to determine the actual product expiration date.

F. After the licensee verifies the tentative expiration date, or determines the appropriate expiration date, the licensee shall include that expiration date on each batch of product.

G. Shelf life testing shall be repeated if the production facility's process or the product's chemical composition is changed.

H. The licensee shall retain a reserve sample that represents each batch of medical marijuana and store it under conditions consistent with product labeling. The reserve sample shall be stored in the same immediate container-closure system in which the product is dispensed, or in one that has similar characteristics. The reserve sample must consist of at least twice the quantity necessary to perform all the required tests.

I. The licensee shall retain the reserve for at least one year following the batch's expiration date. At the end of this time or later, the reserve shall be destroyed following the procedures set forth in Chapter 27.

J. If the department deems that public health may be at risk, the department may require the licensee to release any reserve sample to be tested at any time for any analysis it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 23. Laboratory Approval and Testing

§2301. Laboratory Approval

A. No laboratory shall handle, test or analyze medical marijuana or product unless approved by the department in accordance with this Section. A list of approved laboratories will be made available by the department on its website.

B. No laboratory shall be approved to handle, test or analyze medical marijuana or product unless the laboratory:

1. is accredited to International Organization for Standards (ISO) 17025 standards by a private laboratory

accrediting organization for the analyses being conducted. Additionally, the laboratory must provide the department with a copy of the most recent inspection report granting accreditation and every inspection report thereafter. Failure to maintain accreditation to the ISO 17025 will result in the revocation of the department's approval for medical marijuana or product testing;

2. is independent from all other persons involved in the medical marijuana industry in Louisiana, which shall mean that no person with a direct or indirect interest in the laboratory shall have a direct or indirect financial, management or other interest in a licensed dispensary pharmacy, dispensary facility, licensee, production facility, certifying physician or any other entity that may benefit from the production, manufacture, dispensing, sale, purchase or use of medical marijuana or product;

3. employs, at a minimum, a laboratory director with sufficient education and experience in a regulated laboratory environment in order to obtain and maintain certification;

4. maintains a written and documented system to evaluate and document the laboratory's and each employee's competency in performing authorized required tests. Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls);

5. submits to an on-site facility review by the department or its designated agent prior to the granting of departmental approval. Facilities will continue to be subject to inspection at any time subsequent to approval; and

6. accepts the requirement that laboratories utilize the department's approved computerized inventory tracking system (LMMTS) to post results of sample analyses for review by the department and licensee. The laboratory is responsible for any costs associated with their access to the computerized inventory tracking system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§2303. Laboratory Testing

A. Each batch of medical marijuana concentrate and product shall be made available by the licensee for an employee of an approved laboratory or otherwise independent sample collector to select a random and representative sample of sufficient volume to conduct required analyses, which shall be tested by an approved laboratory.

1. Medical marijuana concentrate shall not be used to produce any form of product until it has passed all analysis limits for:

- a. active ingredient analysis for characterization of potency;
- b. pesticide active ingredients, including but not limited to, the most recent list of targeted pesticides published by the department;
- c. residual solvents;
- d. heavy metals; and
- e. mycotoxins.

2. Product shall not be released for delivery to a dispensary for sale or consumption until it has passed all analysis limits for:

- a. microbiological contaminants;
- b. active ingredient analysis for accuracy of potency; and
- c. homogeneity.

B. The department may select a random sample at any point in the process for the purpose of analysis for anything the department deems necessary.

C. Samples shall be secured in a manner approved by the department at all times when not in immediate use for the analyses being conducted.

D. Testing Specifications and Limits

1. Every sample shall undergo a microbiological test. For purposes of the microbiological test, a sample shall be deemed to have passed if it satisfies the recommended microbial and fungal limits for cannabis products in colony forming units per gram (CFU/g) as follows:

- a. total yeast and mold: <10,000 CFU/g; and
- b. *E. coli* (pathogenic strains) and *Salmonella* spp. <1 CFU/g.

2. Every sample shall undergo a mycotoxin test. For purposes of the mycotoxin test, a sample shall be deemed to have passed if it meets the following standards:

- a. aflatoxin B1: <20 ppb;
- b. aflatoxin B2: <20 ppb;
- c. aflatoxin G1: <20 ppb;
- d. aflatoxin G2: <20 ppb; and
- e. ochratoxin: <20 ppb.

3. Every sample shall undergo a pesticide chemical residue test. For purposes of the pesticide chemical residue test, a sample shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item as set forth in subpart C of USEPA's regulations for tolerances and exemptions for pesticide chemical residues in food [40 CFR 180 (2014)];

4. Every sample shall undergo a residue solvent test. For purposes of the residue solvent test, a sample shall be deemed to have passed if the following solvents are below the limits listed below:

- a. butanes: <800 ppm;
- b. heptanes: <500 ppm;
- c. benzene: <1 ppm;
- d. toluene: <1 ppm;
- e. hexanes: <10 ppm;
- f. total xylenes: <1 ppm; and
- g. ethanol: <5,000 ppm.

5. Every sample shall undergo a heavy metal test. For the purpose of the heavy metal test, a sample shall be deemed to have passed if it meets the following standards:

- a. arsenic: <10ppm;
- b. cadmium: <4.1ppm;
- c. lead: <10ppm; and
- d. mercury: <2.0ppm.

6. Every sample shall undergo an active ingredient analysis or potency analysis. For medical marijuana concentrate samples, the potency test is to establish the presence of active ingredients and their concentrations for accurate calculations of amounts needed for the production of products. For product samples, the potency test is to

establish the active ingredient composition for verification of labeling to ensure accurate dosing:

- a. requires analysis of the following actives:
 - i. THC (tetrahydrocannabinol);
 - ii. THCA tetrahydrocannabinol acid;
 - iii. CBD cannabidiol; and
 - iv. CBDA cannadidiolic acid.

b. for product analysis, a variance of no more than plus or minus fifteen percent is allowed from the labeled amount of active ingredient. Thus a product labeled as containing 10 milligrams THC must contain no less than 8.50 milligrams THC and no more than 11.50 milligrams THC.

7. Every sample shall undergo a homogeneity test. A product will be considered not homogenous if ten percent of the product contains more than twenty percent of the total active ingredient.

E. If a medical marijuana concentrate sample fails testing for pesticides, heavy metals or mycotoxin, the entire batch from which the sample was taken shall be disposed of in accordance with Chapter 27.

F. If a medical marijuana concentrate sample fails residual solvents testing, then, with prior approval of the department, the product may be subjected to an appropriate remedy (ex. vacuum drying), reformulated and tested again. The reformulation must pass all required tests for a medical marijuana concentrate in duplicate before it can be released for use in products. If either duplicate fails any test, the entire batch shall be disposed of in accordance with Chapter 27. A batch of medical marijuana concentrate can only be reformulated once and only to remedy excessive residual solvents.

G. If a product fails the microbiological testing the entire batch from which the sample was taken shall be disposed of in accordance with Chapter 27.

H. If a product fails the potency or homogeneity testing then, with prior approval of the department, the product can be re-sized and tested again. The re-formulated product shall be tested again in duplicate and pass all required tests before it can be released for sale or consumption. If either duplicate fails any test, the entire batch shall be disposed of in accordance with Chapter 27.

I. The laboratory shall file with the department and licensee an electronic copy of each laboratory test result for any sample that does not pass a test. In addition, the laboratory shall maintain the laboratory test results including all relevant chromatograms and quality control documentation for at least five years and make them available at the department's request.

J. The laboratory shall dispose of any remaining medical marijuana or product samples no sooner than 60 days following the completion of any testing. Disposal will be performed in accordance with Chapter 27.

K. The licensee shall provide to the dispensary the laboratory test results for each batch of product purchased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 25. Transportation

§2501. Transportation

A. The licensee or its authorized permittee shall only be allowed to transport medical marijuana or product to the following locations:

1. from its production facility to dispensaries;
2. from its production facility to a laboratory for testing or research; and
3. when a specific non-routine transport request from the licensee is approved in writing by the department.

B. The licensee or its authorized permittee shall:

1. have a valid Louisiana driver's license and be insured above the legal requirements in Louisiana; and
2. be capable of securing (locking) medical marijuana and product items during transportation.

C. Prior to transporting medical marijuana or product, a licensee shall generate a transport manifest, utilizing LMMTS, that accompanies every transport of medical marijuana or product. Such manifests shall contain the following information:

1. the name, contact information of a licensee authorized representative, licensed premises address, and the authorized permittee transporting the medical marijuana or product;
2. the name, contact information, and premises address of the dispensary or laboratory receiving the delivery;
3. medical marijuana or product name and quantities (by weight or unit) of each item contained in each transport, along with the requisite unique identification number for every item;
4. the date of transport and time of departure;
5. arrival date and estimated time of arrival;
6. delivery vehicle make and model and license plate number; and
7. name and signature of the authorized permittee accompanying the transport.

D. Only the licensee or its authorized permittee may transport medical marijuana or product from the production facility to multiple dispensaries in a single trip in the event that each transport manifest correctly reflects specific inventory in transit.

E. Transport manifests shall be available for viewing through LMMTS, to the dispensary, laboratory for testing, and the department before the close of business the day prior to transport.

F. The licensee or its authorized employee shall provide a copy of the transport manifest to law enforcement if requested to do so while in transit.

G. An authorized employee of the dispensary or approved laboratory for testing shall verify that the medical marijuana or product are received as listed in the transport manifest by:

1. verifying and documenting the type and quantity of the transported medical marijuana or product against the transport manifest; and
2. returning a copy of the signed transport manifest to the production facility.

H. A receiving dispensary or approved laboratory for testing shall separately document any differences between

the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in LMMTS and in any relevant business records.

I. The licensee shall ensure that all medical marijuana, plant material, or product transported on public roadways is:

1. only transported in a locked, safe and secure storage compartment that is part of the motor vehicle transporting the medical marijuana or product, or in a locked storage container that has a separate key or combination pad;

2. transported so it is not visible or recognizable from outside the vehicle; and

3. transported in a vehicle that does not bear any markings to indicate that the vehicle contains medical marijuana or bears the name or logo of the licensee.

J. Authorized permittees who are transporting medical marijuana or product on public roadways shall:

1. travel directly to the dispensary or laboratory testing facility; and

2. document refueling and all other stops in transit, including:

- a. the reason for the stop;
- b. the duration of the stop;
- c. the location of the stop; and
- d. all activities of employees exiting the vehicle.

K. Every authorized permittee shall have access to a secure form of communication with the licensee and the ability to contact law enforcement through the 911 emergency systems at all times that the motor vehicle contains medical marijuana or product. If an emergency requires stopping the vehicle, the employee shall report the emergency immediately to law enforcement through the 911 emergency systems and the licensee, which shall immediately notify the department. The employee shall also complete an incident report form provided by the department.

L. The licensee shall ensure that all delivery times and routes are randomized.

M. Under no circumstance shall any person other than a designated permittee have actual physical control of the motor vehicle that is transporting the medical marijuana or product.

N. The licensee shall staff all transport motor vehicles with a minimum of two employees. At least one employee must remain with the motor vehicle at all times that the motor vehicle contains medical marijuana or product.

O. A permittee shall carry his permittee identification card at all times when transporting or delivering medical marijuana or product and, upon request, produce the identification card to the department or to a law enforcement officer acting in the course of official duties.

P. The licensee shall ensure that a vehicle containing medical marijuana or product in transit is not left unattended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 27. Sanitation and Disposal

§2701. Production Facility Sanitation

A. The production facility shall be designed, constructed and operated in such a manner that:

1. all buildings, fixtures and other facilities are maintained in a sanitary condition;

2. floors, walls and ceilings are adequately cleaned;

3. litter and waste are properly removed and all waste disposal operating systems are maintained in such a manner that they do not constitute a source of contamination;

4. rubbish is disposed of so as to minimize the development of odor and minimize the potential for waste becoming an attractant, harborage or breeding place for pests;

5. all activities and operations involved in the receiving, inspecting, transporting, segregating, preparing, production, packaging and storing of medical marijuana or products shall be conducted in accordance with adequate sanitation principles;

6. all contact surfaces, including utensils and equipment used for the preparation of medical marijuana or products, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be designed and shall be of such material and workmanship as to be adequately cleanable, and shall be properly maintained;

7. only sanitizing agents registered with the department pursuant to the Act shall be used in the production facility, and they shall be used in accordance with labeled instructions;

8. the licensee shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and in good repair; and

9. hand-washing facilities shall be adequate and conveniently located in the production facility, and furnished with running water at a suitable temperature. They must provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

B. Permittees and authorized visitors to the production facility shall follow hygienic practices while present at the facility, including but not limited to the following:

1. maintaining adequate personal cleanliness;

2. washing hands thoroughly in adequate hand-washing areas before starting work and at any other time when hands may have become soiled or contaminated; and

3. permittees and authorized visitors who, by medical examination or supervisory observation, are shown to have, or appear to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with medical marijuana or products, shall be excluded from any operations that may be expected to result in microbial contamination until the condition is corrected.

C. Prior to commencing operation, the production facility in its entirety will be inspected by State Fire Marshall, Department of Health, and any other entity required by law.

D. The authorized health inspectors may at any time enter any building, room, enclosure, or premises occupied or used, or suspected of being occupied or used, in production facility activities for the purpose of inspecting the premises and all utensils, fixtures, furniture, and machinery used in the production facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§2703. Potable Water Supply

A. Potable water supply lines shall not be connected to process water lines, chemical lines or equipment, unless proper backflow protection is installed.

B. Water service lines that connect a production facility to a public water supply shall include either a reduced pressure principle backflow preventer or a fixed proper air gap, in accordance with the Part XIV (Plumbing) of the *Sanitary Code*, state of Louisiana.

C. Water service lines that connect a production facility to a potable water supply other than a community public water supply shall include either a reduced pressure principle backflow preventer or a fixed proper air gap, in accordance with the Part XIV (Plumbing) of the *Sanitary Code*, state of Louisiana.

D. Installation, maintenance and inspection of backflow prevention devices shall be carried out in accordance with the requirements of Part XIV (Plumbing) of the *Sanitary Code*, state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§2705. Disposal of Waste

A. Disposal of waste rendered unusable shall follow the methods set forth in this section. For the purpose of this Section "waste" shall include:

1. plant material waste;
2. medical marijuana waste; and
3. product waste.

B. The licensee shall dispose of any waste as provided for in this section, and maintain a written record of disposal that includes:

1. the date returned;
2. the quantity returned; and
3. the type and batch number returned.

C. Waste must be stored, secured, locked and managed in accordance with these rules and as submitted and approved in the licensee's written system of internal controls.

D. The licensee shall provide the department, through the LMMTS, a minimum of seven days notice prior to rendering the product unusable and disposing of the product.

E. The allowable method to render waste unusable is by grinding and incorporating the waste with other ground materials so the resulting mixture is at least 50 percent non-medical marijuana waste by volume. Other methods to render waste unusable must be approved by the department before implementation. Material used to grind with the waste may include:

1. food waste;
2. yard waste;
3. vegetable-based grease or oils;
4. paper waste;
5. cardboard waste;
6. plastic waste;
7. soil; or
8. other wastes approved by the department (e.g., non-recyclable plastic, broken glass, leather, agricultural

material, biodegradable products, paper, clean wood, fruits, vegetables, and plant matter).

F. Waste shall be rendered unusable prior to leaving a production facility. Waste rendered unusable following the methods described in this Section shall be disposed of by delivery to an approved solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

1. compost, anaerobic digester;
 2. landfill, incinerator, or other facility with approval of the jurisdictional health department; or
 3. a waste-to-energy facility
- G. Inventory Tracking Requirements

1. In addition to all other tracking requirements set forth in these rules, the licensee shall utilize the LMMTS to ensure its post-harvest waste materials are identified, weighed and tracked while on the licensed premises until disposed of.

2. All waste shall be weighed, recorded and entered into LMMTS prior to mixing and disposal. Verification of this event shall be performed by a supervisor and conducted in an area with video surveillance.

3. All waste shall be weighed before leaving the production facility. A scale used to weigh waste prior to entry into the LMMTS shall be tested and approved in accordance with R.S. 3:4601 et seq.

4. The licensee is required to maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 29. Labeling

§2901. Labeling Requirements

A. Each product shall be labeled by the licensee prior to sale to a dispensary. Each label shall be securely affixed to the package and shall include:

1. the batch number(s) assigned by the licensee to the marijuana plant(s) from which the medical marijuana used in the product was harvested;

2. a complete list of solvents, chemicals and pesticides used in the creation of any medical marijuana concentrate;

3. a complete list of all ingredients used to manufacture the product, which may include a list of any potential allergens contained within, or used in the manufacture of a product;

4. the potency of the THC and CBD in the product, expressed in milligrams for each cannabinoid;

5. the net weight, using a standard of measure compatible with the LMMTS, of the product prior to its placement in the shipping container;

6. a product expiration date, upon which the product will no longer be fit for consumption, or a use-by date, upon which the product will no longer be optimally fresh. Once a label with a use-by or expiration date has been affixed to a product, the licensee shall not alter that date or affix a new label with a later use-by or expiration date; and

7. a statement that the product has been tested for contaminants, that there were no adverse findings, and the date of testing.

B. Labeling text on any product may not make any false or misleading statements regarding health or physical benefits to the consumer. Each label must include the following statements:

1. "Contains Medical Marijuana. For Medical Use Only. KEEP OUT OF THE REACH OF CHILDREN.";

2. "There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.";

3. a statement that it is illegal for any person to possess or consume the contents of the package other than the qualifying patient.

C. Labeling text required by this section to be placed on any product may be no smaller than 1/16 of an inch, must be printed in English and must be unobstructed and conspicuous.

D. The following information is permissible on a label:

1. the product's compatibility with dietary restrictions; and

2. a nutritional fact panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§2903. Packaging Requirements

A. The licensee shall ensure that every product being sent to a dispensary for sale to a qualified patient is placed within a child resistant, light resistant, tamper proof container prior to sale or transport to the dispensary.

B. If it is not intended for the entire product to be used at a single time, the packaging must be resealable in a manner that maintains its child resistant effectiveness for multiple openings.

C. A product may not be placed in packaging that specifically targets individuals under the age of 21. Any packaging must not:

1. bear any resemblance to a trademarked, characteristic or product-specialized packaging of any commercially available candy, snack, baked good or beverage;

2. use the word "candy" or "candies";

3. use a cartoon, color scheme, image, graphic or feature that might make the package attractive to children; or

4. use a seal, flag, crest, coat of arms or other insignia that could reasonably lead any person to believe that the product has been endorsed, manufactured, or used by any state, parish, municipality or any agent thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§2905. Product Dosage Identification

A. Each product shall be marked, stamped or imprinted with the dosage, as approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

§2907. Advertising

A. The licensee shall not advertise through any public medium, including but not limited to newspapers, television, radio, internet, or any other means designated to market its products to the general public. The licensee may market its products directly to the licensed dispensaries and to physicians through direct mail, brochures or other means directed solely to the licensed dispensaries and/or physicians and not available to the general public.

B. Any advertisement permitted by Subsection A shall not:

1. make any deceptive, false, or misleading assertions or statements regarding any product; or

2. assert that its products are safe because they are regulated by the department. The licensee may state in advertisements that its products have been tested by an approved laboratory, but shall not assert that its products are safe because they are tested by an approved laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

Chapter 31. Enforcement

§3101. Enforcement

A. Whenever the department has any reason to believe that a violation of the Act or this Chapter or of any rule or regulation adopted pursuant to this Chapter has occurred, the department may present the alleged violations to a hearing officer for a determination.

B. The department may impose civil penalties and/or suspend, revoke or place on probation any permittee or licensee for the commission of a violation of the Act of these rules. Civil penalties may be assessed, probation may be imposed, and permits and licenses may be suspended or revoked only upon a ruling of the hearing officer based on an adjudicatory hearing held in accordance with the Administrative Procedure Act.

1. The department shall appoint a hearing officer to preside over all hearings.

2. The department shall notify the alleged violator of the hearing, by personal service or certified mail, at least thirty days prior to the date the hearing is held.

3. The notice shall contain the following information:

a. a statement of the alleged violation;

b. the specific section of the Act or these rules and regulations alleged to have been violated;

c. the date, time, and place where the hearing will be held;

d. a statement of the rights which will be accorded to the licensee or registered employee at the hearing; and

e. a statement as to the possible penalties which may be imposed upon a finding by the hearing officer at the hearing that the alleged violator committed the alleged violation.

4. The alleged violator shall have the right to representation by legal counsel and the right to examine and cross-examine witnesses as in civil cases. The alleged violator shall have the right to compel the attendance of witnesses and the production of evidence upon depositing

with the department the fees required for issuing subpoenas and subpoenas duces tecum in civil cases.

C. Any person who violates any provision of the Act or this Chapter or any rule or regulation adopted pursuant thereto or any provision of a stop order, shall be subject to a civil penalty of not more than \$50,000 for each act of violation and for each day of violation. Each day on which a violation occurs shall be a separate offense.

D. The department may summarily suspend the licensee or a permit without a hearing, simultaneously with the institution of proceedings for a hearing, if the department finds that the public safety or welfare immediately requires this action. In the event that the department summarily suspends a licensee or a permit, a hearing shall be held within 30 days after the suspension has occurred. The suspended party may seek a continuance of the hearing, during which the suspension shall remain in effect. The proceeding shall be concluded without reasonable delay. If the department does not hold a hearing within 30 days after the date of the suspension, and the licensee or permittee has not requested a continuance, the license or permit shall be automatically reinstated.

E. The department may require an individual permittee or the licensee against whom disciplinary action has been taken by the department to pay the reasonable costs incurred by the department for the hearing or proceedings, including its legal fees, court reporter, investigators, witness fees, and any such costs and fees incurred by the department. These costs and fees shall be paid no later than thirty days after the decision of the board becomes final. No license or permit shall be renewed or reinstated until such costs have been paid.

F. The department may institute civil proceedings in the Nineteenth District Court to enforce the rulings of the hearing officer. The department may institute civil proceedings seeking injunctive relief to restrain and prevent violations of the provisions of this Part or of the rules and regulations adopted under the provisions of this Part in the Nineteenth District Court.

G. As to every matter on which a hearing is held, the presiding hearing officer shall prepare a written findings of fact and conclusions of law, which shall contain, at a minimum, the record of the hearing, including all submissions, his finding of the facts that are pertinent to the decision, his conclusions of applicable law related to the decision, and his decision. The submission shall be in writing, shall be provided to all involved applicants, and shall be a public record, except for any submitted materials which are confidential pursuant to law.

H. The hearing officer shall render his decision within thirty days after the hearing is conducted.

I. All appeals from any decision of the hearing officer shall be filed in accordance with R.S. 49:955.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:

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 Tabitha Gray, Executive Counsel, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 2000, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on January 4, 2017. No preamble is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Marijuana

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule promulgates the administration, oversight, and permitting/licensing activities surrounding the production and distribution of medical marijuana as authorized by Act 261 of 2015. The proposed rules are being promulgated pursuant to Act 567 of the 2016 Regular Session.

The LA Dept. of Agriculture & Forestry estimates that oversight of the medical marijuana program will cost approximately \$701,000 annually. This cost includes laboratory

testing (\$300,000), a marijuana inventory tracking system (\$70,000), and operating expenses (\$7,000). Initial estimates for program personnel costs are estimated to total \$324,233 annually. The LDAF has decided to reallocate existing T.O. positions for four additional necessary personnel (auditor, inspector, administrative assistant). Presently these positions are not funded. Initially the LDAF will fill the auditor, inspector, and administrative assistant positions, and utilize a current LDAF employee as the interim program manager. LDAF eventually plans on hiring a full-time program manager.

The department anticipates medical marijuana regulatory expenditures – such as laboratory testing, inspections, and inventory control – to eventually be funded through revenues raised by gross sales of the product (see Effect on Revenue Collections), but LDAF would need funding from some other source (State General Fund, etc.) to fund the initial start-up costs associated with regulating medical marijuana. Presently funds for these expenses are not included in the LDAF appropriation for FY 17 and would need to be appropriated via BA-7 request or in a supplemental appropriation, or funded via treasury seed from the Dept. of Treasury.

At present, the LSU AgCenter and the Southern University AgCenter have opted in to produce medical marijuana, but have not begun construction on production facilities. The LDAF estimates that production of marijuana for therapeutic use will not occur for another 18 – 24 months. LDAF staff indicates that laboratory testing and inventory control will not be necessary until seeds are acquired and the crop planted. As a result, some expenditures for the LDAF made pursuant to the proposed rules (i.e. product testing) may not occur in FY 17 and be delayed until FY 18 or subsequent fiscal years. Furthermore, the LDAF indicates that it will utilize existing resources to the extent possible to fund expenditures related to the start-up of regulating medical marijuana. However, it appears likely that a supplemental appropriation or treasury seed will be necessary to fund expenditures in FY 17 that cannot be absorbed within the LDAF's current appropriation.

Furthermore, the proposed rules set guidelines for the construction of medical marijuana growth facilities, as well as the practice of growing medical marijuana and producing it for therapeutic use. The LSU AgCenter and Southern University AgCenter have opted in to produce the crop, and would have to construct growing facilities pursuant to the guidelines provided in the proposed rules, which represents an indeterminable, though likely significant cost. Neither AgCenter has been appropriated funding specifically for the production of medical marijuana, and would either have to fund the construction of a facility within their existing appropriation or would have to seek third-party investment.

In addition, both AgCenters must pay an annual \$100 per employee permit fee for every employee associated with the production of medical marijuana. The number of employees both entities will utilize for the program is unknown; therefore it is reasonable to assume that they will incur an indeterminable increase in expenditures associated with permitting. An annual license fee of \$100,000 is also required to grow the crop, but the LDAF is presently waiving it for both entities. In the event the LDAF no longer waives the license fee, both entities will be required to pay \$100,000 annually.

The proposed rules will not have any impact on expenditures of local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will increase self-generated revenue collections by the department by an indeterminable amount. The funds for the medical marijuana program are authorized by R.S. 40:1046(J)(9) and proposed rule 701. The rule and law provide for the department to be paid up to 7% of gross sales

quarterly. Revenue collections will depend on crop volume, market price, and demand, which cannot be estimated at this time.

Licensees must pay a \$100,000 licensing fee to produce medical marijuana. However the LDAF has initially waived this fee since the LSU AgCenter or the Southern AgCenter have opted in to produce medical marijuana. Furthermore, licensees must pay a \$100 permit fee for every employee associated with the medical marijuana program. All fees associated with the medical marijuana program will fund LDAF's expenditures associated with the regulation of medical marijuana production.

The proposed rules will not have any impact on revenue collections of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Under the proposed rules, private licensees must pay to the department up to 7% of gross sales quarterly. In addition, there is a \$100 fee for a permit for each employee. Furthermore, licensees must pay an annual license fee of \$100,000 to produce medical marijuana. Licensees will also incur expenses associated with constructing a production facility that meets the requirements set forth in the proposed rules. However, due to the LSU AgCenter and the Southern University AgCenter opting to produce medical marijuana, it is unclear if private firms will incur expenses associated with the production of medical marijuana in the future, as the state limits the number of licensees to one if the production is by a private firm, or two if production is by the LSU and Southern University AgCenters. Presently both AgCenters have opted in.

In addition, to the extent private investors license with the LDAF to produce medical marijuana, they would likely realize profits over time to the extent patient counts and use of the substance increases. Similarly, to the extent private investors fund the costs of producing medical marijuana at both AgCenters, they may realize a portion of gross revenues raised through the production and sale of medical marijuana products.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules affect competition, as there are structures in place (i.e. license requirements) to limit the market for production of medical marijuana in Louisiana to two producers at most. In the event the AgCenters opt out of producing medical marijuana, private firms would compete for a single license. The authorization of any entity, public or private, to produce medical marijuana will open a new business enterprise that currently is not present in LA and should offer an avenue to an indeterminable increase in employment opportunities, dependent upon the level of production and market demand.

Dane Morgan
Assistant Commissioner
1611#037

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Licensing Section

Residential Home
(LAC 67:V.Chapter 71)

In accordance with the provisions of the Administrative Procedures Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:V, Subpart 8, Chapter 71, Child Residential Care, Class A.

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 proposed Rule allows the department to revise the child residential licensing standards to incorporate standards to protect the safety and well-being of children residing in residential homes with their parents and 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.

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(1), 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 of residents are not imperiled. Standards shall be waived only when the secretary determines that the economic impact is sufficient to make compliance impractical.

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 of a resident 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 or child of a 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 or child of a resident by a parent or any other person;

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

c. the involvement of the resident or child of a 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 or child of a resident's sexual involvement with any other person or of the resident's or child of a resident's involvement in pornographic displays or any other involvement of a resident or child 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 an individual of the same chronological age or level of maturity or that are determined to be developmentally appropriate for an individual, 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 individual, activities or items that are suitable for the individual based on the developmental stages attained by the individual with respect to the cognitive, emotional, physical, and behavioral capacities of the individual.

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 who has not reached age eighteen or otherwise legally emancipated. *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 resident or child of a 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 of a resident. 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 of a resident.

Direct Supervision—the function of observing, overseeing, and guiding a resident or child of a resident and/or group of residents or children of residents. 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 of residents 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 of residents 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 of residents 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 of residents. 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 a staff person 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 or child of a 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).

Interdiction—a legal restraint upon a person incapable of managing his estate, because of mental incapacity, from signing any deed or doing any act to his own prejudice, without the consent of his curator or interdictor.

Juridical Entity—corporation, partnership, limited-liability company, church, university, or governmental entity.

Legal Guardian—person who has the legal authority and the corresponding duty to care for the personal and property interest of another person.

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 of a resident and the responsibility for the resident's or child of a resident'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—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 of a resident'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 of residents 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 of a resident 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 homes, a licensed or unlicensed day care provider, any individual who provides such services to a child of a resident 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 of a resident 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.

Operator—owner of a residential home.

Owner—the individual or juridical entity who exercises ownership over a residential home, whether such ownership 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 entity.

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 of residents or residents which includes all owners of a facility, including the program director of such facility.

Reasonable and Prudent Parent Standard—standard that a caregiver shall use when determining whether to allow a resident or child of a resident 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 of a resident while at the same time encouraging the emotional and developmental growth of the resident or child of a resident.

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 of a resident 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 of a resident and knowledge and skills relating to applying the standard to decisions such as whether to allow the resident or child of a resident 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 of a resident to and from extracurricular, enrichment, and social activities.

Reasonable Suspicion—suspicion based on specific and articulable facts which indicate that an owner, 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 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 between 9 p.m. and 6 a.m. 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) of the resident.

Seclusion—involuntary confinement of a resident away from other residents, due to imminent risk of harm to self or others, in a room which the resident is physically prevented from leaving.

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 of residents 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 of a resident and/or group of residents or children of residents. 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 of a resident 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 of residents.

Waiver—an exemption granted by the secretary of the department from compliance with a standard that will not place the resident, child of a 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.

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 contender 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 of residents. If an individual has previously obtained a certified copy of their criminal background check 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 of residents 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 program 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. i-vi., 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. Documentation of a state central registry disclosure form (SCR-1) shall be submitted for all owners as required by R.S. 46:1414.1. SCR-1 forms shall be dated no earlier than 30 days before the application has been received by the Licensing Section. This information shall be reported prior to the owner being on the premises of the 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 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 of a resident/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 of a resident/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 of a resident/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 of a resident/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. 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.

b. 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. SCR 1 forms shall be dated no earlier than 30 days of the application being received by the 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.

i. 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 in writing immediately or the application shall be denied.

ii. 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.

iii. 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 in writing within 10 business days of the mailing of the DAL decision or the application shall be denied.

c. Any information received or knowledge acquired that a current or prospective owner, 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.

d. 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.

7. 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.

8. 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.

9. 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. The verbal report shall be followed by a written report to the Licensing Section within 24 hours.

10. Providers with live-in staff may allow children of staff members to reside with their parents in the private staff quarters of the residential home.

11. Provider nor staff shall permit a resident, age 18 years or older, that has been convicted of, pled guilty, or nolo contendere to any offense listed in R.S. 15:587.1. or to any offense involving a juvenile victim to remain on the premises of the residential home.

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.DCFS.louisiana.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 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. list of all staff to include staff's name and position;
 - n. a floor sketch or drawing of the premises to be licensed;
 - o. any other documentation or information required by the department for licensure;
 - p. documentation of a Louisiana State Police fingerprint based satisfactory criminal record check for all staff including all owners of the facility as noted in Section 7107.A.5., 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;
 - q. 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 as noted in Section 7107.A.6(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;
 - r. current approval from the Department of Education, if educational services will be provided on-site for residents;
 - s. copy of the completed reasonable and prudent parent authorized representative form;
 - t. 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
 - u. 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, Licensing Section staff 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, Licensing Section staff 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, the department may conduct a follow-up inspection to verify compliance with all licensing laws or standards and other required statutes, laws, ordinances, rules, or regulations.

4. The application shall be denied if the department is unable to issue a license within 180 calendar days of receipt of the completed initial application packet due to provider non-compliance.

5. When issued, residential home provider licenses 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.

In accordance with R.S 46:1406(E), 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 7111.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 of residents/residents, DCFS may require the provider to cease providing the service and/or restrict the age of the children of residents/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.b-f 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 State 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 of residents;
- f. copy of a criminal background clearance or attestation forms as referenced in §7107.A.5 for all owners and 7111.B.2.a.ii for 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 inspection shall be conducted to ensure 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. In accordance with R.S. 46:1406, 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 (if applicable);
- xi. verification of experience and educational requirements for the service plan manager (if applicable);
- xii. list of consultant/contract staff to include name, contact info, and responsibilities;
- xiii. list of all staff to include staff's name and position;
- xiv. a floor sketch or drawing of the premises to be licensed;
- xv. any other documentation or information required by the department for licensure;
- xvi. documentation of a Louisiana State Police fingerprint based satisfactory criminal record check for all staff including all owners of the facility, as required by R.S. 46:51.2 and 15:587.1;

xvii. 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 (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;

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

xix. current completed reasonable and prudent parent authorized representative form as referenced in §7111.A.10.

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 of residents/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 of resident's records shall be transferred to the new location.

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

e. 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.

f. 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 of residents/residents; and/or
- vi. addition of an individual to the existing ownership (individual or partnership) 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 in name of new owner;
- viii. copy of current proof of insurance in name of new owner 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. list of all staff to include staff's name and position;
- xiv. a floor sketch or drawing of the premises to be licensed;
- xv. any other documentation or information required by the department for licensure;
- xvi. documentation of a Louisiana State Police fingerprint-based satisfactory criminal record clearance for all staff including owners. 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 is not transferrable;
- xvii. 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 (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 state central registry disclosure forms for staff and/or owners is not transferrable;
- xviii. current approval from the Department of Education, if educational services will be provided on-site for residents;
- xix. copy of the current completed reasonable and prudent parent authorized representative form;
- xx. 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
- xxi. 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. If approvals or extensions are not submitted to the licensing section prior to the sixtieth day, the license shall be revoked.

c. A licensing inspection shall be conducted within 60 calendar days to verify compliance with the licensing standards.

d. All staff/children of residents'/resident's information shall be updated under the new ownership as required in LAC 67:V.7111.A.2.c, A.5, 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.2-6 of this Section.

f. In the event of a change of ownership, the resident's and children of resident'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 aquets 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 of residents 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. 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;
- e. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;
- f. any act of fraud such as falsifying or altering documents required for licensure;
- g. the owner, director, officer, board of directors member, or any person designated to manage or supervise staff or any staff providing care, supervision, or treatment to a resident or child of a resident 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;
- h. 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;
- i. failure of the owner, director, or any employee to report a known or suspected incident of abuse or neglect to child protection authorities;
- j. revocation or non-renewal of a previous license issued by a state or federal provider;
- k. 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;
- l. failure to submit an application for renewal or required documentation or to pay required fees prior to the last day of the anniversary month;
- m. operating any unlicensed facility and/or program;
- n. 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;

o. 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;

p. 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;

q. own a residential home and have been convicted of or have pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense;

r. 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;

s. 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; or

t. have knowledge that a resident age 18 years or older has been convicted of, pled guilty, or nolo contendere to any offense listed in R.S. 15:587.1. or to any offense involving a juvenile victim and allow the resident to remain on the premises of the residential home.

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 program 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 all information as required in Paragraph E.2 of this Section. Each provider is solely responsible for obtaining the application form. The required information 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 DAL 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 residential home 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.

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. Retention of Records

1. Documentation of the previous 12 months' activity shall be available for review. Records shall be accessible during the facility's hours of operation.

2. For licensing purposes, children of residents' 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 with the provider.

4. Records for residents or children of residents 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 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. Critical Violations/Fines

A. In accordance with R.S. 46:1430, when a provider is cited for violations in the following areas, the department may at its' discretion elect to impose sanctions, revoke a license, or both:

1. Paragraph A.5 of Section 7107, Subparagraph E.2.f of Section 7107, Clause F.1.b.xvi of Section 7107, Clause A.2.c.ii of Section 7111, Subparagraph A.5.b of Section 7111, or Clause B.2.a.ii of Section 7111, criminal background check;

2. Subparagraph E.2.g of Section 7107, Clause F.1.b.xvii of Section 7107, Paragraph A.6 of Section 7107, Paragraph L.2 of Section 7107, Clause A.2.d.iii of Section 7111, Subparagraph A.6.c of Section 7111, or Subparagraph B.2.x of Section 7111, state central registry disclosure;

3. Paragraph A.9 of Section 7111, staffing ratios;
4. Paragraph F.19 of Section 7117, motor vehicle checks;
5. Clause A.4.a.xiii of Section 7111, Clause A.4.c.xv of Section 7111, or Subparagraph D.1.a of Section 7111, critical incidents; and/or
6. Paragraph A.9 of Section 7111, Subparagraph A.4.c of Section 7111, or Paragraph B.5 or B.6 of Section 7123—supervision.

B. The option of imposing other sanctions does not impair the right of DCFS to revoke and/or not renew a provider's license to operate if it determines that the violation poses an imminent threat to the health, safety, rights, or welfare of a resident or child of a resident. Only when the department finds that the violation does not pose an imminent threat to the health, safety, rights, or welfare of a resident or child of a resident will the department consider sanctions in lieu of revocation or non-renewal; however, the absence of such an imminent threat does not preclude the possibility of revocation or non-renewal in addition to sanctions, including fines.

C. In determining whether multiple violations of one of the above categories has occurred, both for purposes of this Section and for purposes of establishing a history of non-compliance, all such violations cited during any 24-month period shall be counted, even if one or more of the violations occurred prior to the adoption of the current set of standards. If one or more of the violations occurred prior to adoption of the current set of standards, a violation is deemed to have been repeated if the standard previously violated is substantially similar to the present rule.

D.1. For the first violation of one of the aforementioned categories, if the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category occur.

2. The warning letter shall include a directed corrective action plan (CAP) which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing standards. The provider shall acknowledge receipt of the warning letter by submitting a written response to the CAP within 10 calendar days of receipt of the letter. Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the standards may result in either the assessment of a civil fine, revocation/non-renewal of license, or both.

E. For the second violation of one of the same aforementioned categories within a 24-month period, provider will be assessed a civil fine of up to \$250 per day for a violation in each of the aforementioned categories (if same category cited twice) and fined for each day the provider was determined to be out of compliance with one of the aforementioned categories according to the following schedule of fines:

1. The base fine level for all violations shall be \$200 per day. From the base fine level, factor in any applicable upward or downward adjustments, even if the adjustment causes the total to exceed \$250. If the total fine after all upward and downward adjustments exceeds \$250, reduce the fine for the violation to \$250 as prescribed by law.

a. If the violation resulted in death or serious physical or emotional harm to a resident or child of a resident, or placed the resident or child of a resident at risk of death or serious physical or emotional harm, increase the fine by \$50.

b. If the provider had a previous license revoked for the same critical violation cited, increase the fine by \$25.

c. If the critical violation was cited and occurred despite the objective good faith best efforts of licensee to comply, decrease the fine by \$25.

d. If the cited critical violation was for a certified criminal background checks not being renewed upon expiration as required, decrease the fine by \$25.

e. If the cited critical violation was for criminal background checks not being completed prior to hire, increase the fine by \$25.

f. If the cited critical violation was for state central registry disclosure forms not being completed annually as required, decrease the fine by \$25.

g. If the cited critical violation was for state central registry disclosure forms not being completed prior to hire, increase the fine by \$25.

h. If the provider exceeds staffing ratios by more than one resident, increase the fine by \$25.

i. If the provider failed to meet staffing ratios related to children of residents, increase the fine by \$25.

j. If the provider self-reported the incident which caused the critical violation to be cited, decrease the fine by \$25.

k. If the provider failed to self-report the incident which caused the critical violation to be cited, increase the fine by \$25.

l. If a critical violation for supervision was cited due to residents or children of residents being unsupervised in a vehicle, increase the fine by \$25.

m. If a critical violation for supervision was cited due to staff not knowing the whereabouts of residents to which they are assigned, increase the fine by \$25.

F. For the third violation of one of the same aforementioned categories within a 24 month period, the provider's license may be revoked.

G. The aggregate fines assessed for violations determined in any consecutive 12 month period shall not exceed \$2,000 as prescribed by law. If a critical violation in a different category is noted by DCFS that warrants a fine and the provider has already reached the maximum allowable fine amount that could be assessed by the department in any consecutive twelve month period and the department does not revoke or not renew the license, the department may issue a formal warning letter noting the department's intent to take administrative action if further violations of the same category re-occur. The warning letter shall include a directed CAP which shall outline the necessary action and timeframe for such action that a provider shall take in order to maintain compliance with the licensing standards. The Provider shall acknowledge receipt of the warning letter by submitting a written response to the CAP within 10 calendar days of receipt of the letter. Failure by the provider to submit requested information and/or failure to implement the CAP as evidenced by a repeated violation of the same category of the standards may result in revocation/non-renewal of license.

H. Departmental Reconsideration and Appeal Procedure for Fines

1. When a fine is imposed under these standards, the department shall notify the program director or owner by letter that a fine has been assessed due to deficiencies cited at the residential home and the right of departmental reconsideration. The notification may be sent by certified mail or hand delivered to the residential home. If the program director or owner is not present at the residential home, delivery of the written reason(s) for such action may be made to any staff of the residential home. Notice to a staff shall constitute notice to the residential home of such action and the reasons therefore. The letter shall specify the dates and the violation cited for which the fine(s) shall be imposed. Fines are due within 30 calendar days from the date of receipt of the letter unless the provider request a reconsideration of the fine assessment. The provider may request reconsideration of the assessment by asking DCFS for such reconsideration in writing within 10 calendar days from the date of receipt of the letter. A request for reconsideration shall include a copy of the letter from the Licensing Section that notes the reasons for assessment of the fine together with the specific reasons the provider believes assessment of the fine to be unwarranted and shall be mailed to Department of Children and Family Services, Licensing Section, P.O. Box 260036 Baton Rouge, LA 70826. If the provider withdraws the request for reconsideration, the fine is payable within 7 calendar days of the withdrawal or on the original date that the fine was due, whichever is later.

2. The department shall advise the program director or owner by letter of the decision of DCFS after reconsideration and the right to appeal. The notification may be sent by certified mail or hand delivered to the residential home. If the program director or owner is not present at the residential home, delivery of the written decision may be made to any staff of the residential home. Notice to a staff shall constitute notice to the residential home of such action.

a. If DCFS finds that the Licensing Section's assessment of the fine is justified, the provider shall have 15 calendar days from the receipt of the reconsideration letter to appeal the decision to the Division of Administrative Law (DAL). A request for appeal shall include a copy of the letter from the Licensing Section that notes the reasons for assessment of the fine and a copy of the reconsideration decision letter 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.

b. The DCFS Appeals Section shall notify the DAL of receipt of an appeal request. DAL shall conduct a hearing in accordance with the Administrative Procedure Act and shall render a decision. The appellant will be notified by letter from DAL of the decision, either affirming or reversing the department's decision.

c. If the provider has filed a timely appeal and the department's assessment of fines is affirmed by an administrative law judge of the DAL, the fine shall be due within 30 calendar days after mailing notice of the final ruling of the administrative law judge or, if a rehearing is

requested, within 30 calendar days after the rehearing decision is rendered. The provider shall have the right to seek judicial review of any final ruling of the administrative law judge as provided in the Administrative Procedure Act. If the appeal is dismissed or withdrawn, the fines shall be due and payable within 7 calendar days of the dismissal or withdrawal. If a judicial review is denied or dismissed, either in district court or by a court of appeal, the fines shall be due and payable within 7 calendar days after the provider's suspensive appeal rights have been exhausted.

3. If the provider does not appeal within 15 calendar days of receipt of the department's reconsideration decision, the fine is due within 30 calendar days of receipt of the department's reconsideration decision and shall be mailed to Department of Children and Family Services, Licensing Section, P.O. Box 260036 Baton Rouge, LA 70826. If the provider files a timely appeal, the fines shall be due and payable on the date set forth in Subparagraph H.2.c of this Section. If the provider withdraws the appeal, the fine is payable within 7 calendar days of the withdrawal or on the original date that the fine was due, whichever is later.

4. If the provider does not pay the fine within the specified timeframe, the license shall be immediately revoked and the department shall pursue civil court action to collect the fines, together with all costs of bringing such action, including travel expenses and reasonable attorney fees. Interest shall begin to accrue at the current judicial rate on the day following the date on which the fines become due and payable.

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

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Licensing Section, LR 42:

§7110. 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 may remove any resident, child of a resident, or all residents or children of residents 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 of residents or residents in imminent danger. The children of residents 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 of residents 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 of residents are present in that portion and that the private areas are inaccessible to residents and children of residents. Any area to which residents or children of residents have or have had access is

presumed to be part of the facility and not the private quarters of the owner 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 from a state other than Louisiana 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;
10. ensure that the provider establishes a system of business management and staffing which requires maintenance of complete and accurate accounts, books, and records.

E. Authority to Operate. The provider's 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 [RS 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 of residents, and types of behaviors to be accepted for placement.

H. House Rules and Regulations. The provider shall have a clearly written list of rules and regulations governing conduct for residents and children of residents 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).

I. 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 of a resident in care of the provider. The provider shall ensure that the resident or child of a 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. Provider shall assist children of residents and residents at least twice monthly in creating and updating their lifebook. For children of residents and residents that are not developmentally able to participate in the creation and updating of their own lifebook, staff shall create and update for the children and residents.

a. Lifebooks shall be the property of children of residents and residents and shall remain with the child or resident 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 of a resident services;
- vi. record keeping and reporting;
- vii. social service; and
- viii. ancillary services.

b. 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.

c. 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 of residents and methods of meeting those needs prior to working with residents or children of residents;

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 of residents. 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 of residents. If an individual has previously obtained a certified copy of their criminal background check 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. This certified copy of the 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 staff is no longer allowed on the premises until a clearance is received;

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 of residents:

(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 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 a 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 for 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, 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 by volunteer.

3. Personnel Qualifications

a. Program Director—the program director shall meet one of the following qualifications:

i. a doctorate degree in a human services field or in administration, business, or a related field;

ii. a master's degree in a human services field or in administration, business, or a related field and one year of work experience in a human services agency;

iii. a bachelor's degree in a human services field or in administration, business, or a related field, and at least two years of work experience in a human services agency;

iv. six years of work experience in a human services field or a combination of undergraduate education and work experience in a human services field for a total of six years. Fifteen credit hours substitute for 6 months of work experience not to exceed 60 credit hours.

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. Documentation of experience for program director and service plan manager shall be verified in writing by previous employer. Documentation of education shall be verified by a copy of the individual's degree or transcript.

d. 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 of residents, making needed policy revision recommendations, and assisting them in periodic evaluation of the facility's services;
 - x. supervising the facility's management including building, maintenance, and purchasing;
 - xi. participating with the governing body in interpreting the facility's need for financial support;
 - xii. establishing effective communication between staff and residents and children of residents and providing for their input into program planning and operating procedures;
 - xiii. reporting injuries, deaths, and critical incidents involving residents or children of residents to the appropriate authorities; and
 - xiv. supervising the performance of all persons involved in any service delivery/direct care to residents or children of residents.
- 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 review every 30 days 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 of residents, 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 of a resident.

- c. The direct care worker shall be responsible for the daily care and supervision of the residents and children of residents 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 of a resident 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 of a resident in good habits of personal care, hygiene, eating, and social skills;

- vii. protecting the resident and child of a resident from harm;

- viii. handling routine problems arising within the living group;

- ix. representing adult authority to the residents and children of residents in the living group and exercising this authority in a mature, firm, compassionate manner;

- x. enabling the resident or child of a resident 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 of a resident 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 of residents.

5. Contractors

a. Contractors hired to perform work which does not involve any contact with residents or children of residents, shall not be required to have a criminal background check if accompanied at all times by a staff person when residents or children of residents are present in the facility.

b. Contractors hired to perform work which involves contact with residents or children of residents, 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 of residents. 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 of residents. If an individual has previously obtained a certified copy of their criminal background check 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 of residents, 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.x.(a)-(c) shall be followed.

6. Post Licensing Information

a. Providers shall advise residents of the licensing authority of DCFS and that residents may contact the Licensing Section with any unresolved complaints. Providers shall post the current telephone number, email address, and mailing address in an area regularly utilized by residents.

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 staff's 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 provide training in the following topics for all staff within one week of the staff's date of hire and prior to having sole responsibility for residents or children of residents:

i. philosophy, organization, program, and practices of the provider;

ii. specific responsibilities of assigned job duties with regard to residents and children of residents;

iii. administrative procedures and programmatic goals;

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;

ix. reporting and documenting incidents;

x. LGBTQ issues;

xi. implementation of service plans to include a behavior plan, when clinically indicated;

xii. staff and resident grievance procedure;

xiii. rights and responsibilities of residents who have children residing in the facility;

xiv. responsibility of staff with regard to children of residents residing in the facility;

xv. 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;

xvi. the proper use of child safety restraints required by these regulations and state law (See reference sheet for training resources);

xvii. recognizing mental health concerns;

xviii. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

xix. basic skills required to meet the dental and health needs and problems of the residents and children of residents;

xx. prohibited practices;

xxi. behavior management techniques, including acceptable and prohibited practices;

xxii. use of time-out, personal restraints, and seclusion that is to include a practice element in the chosen method performed by a certified trainer for direct care staff;

xxiii. safe self-administration and handling of all medications including psychotropic drugs, dosages, and side effects;

xxiv. working with people with disabilities, attending to the needs of such residents and children of residents in care, including interaction with family members with disabilities; and

xxv. use of specialized services identified in §7117 of this Subpart.

c. The provider shall maintain sufficient information to determine content of training noted in section 7111.A.7.b.i-xxv. This information shall be available for review.

d. 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 or service plan manager, attesting to having received the applicable orientation training and the dates of the orientation training.

e. 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. Documentation of completion shall be the certificate obtained upon completion of the training.

f. All 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 of residents 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 receive 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;

viii. specific responsibilities of assigned job duties with regard to residents and children of residents.

ix. implementation of service plans to include a behavior plan when clinically indicated;

x. staff and resident grievance procedure;

xi. prohibited practices;

xii. recognizing mental health concerns;

xiii. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

xiv. basic skills required to meet the dental and health needs and problems of the residents and children of residents;

xv. behavior management techniques including acceptable and prohibited practices;

xvi. use of time-out, personal restraints, and seclusion which is to include a practice element in the chosen method performed by a certified trainer for direct care staff;

xvii. safe self-administration and handling of all medication including psychotropic drugs, dosages, and side effects;

xviii. rights and responsibilities of residents who have children residing in the facility;

xix. responsibility of staff with regard to children of residents residing in the facility;

xx. working with people with disabilities, attending to the needs of such residents and children of residents in care, including interaction with family members with disabilities;

xxi. use of specialized services identified in §7117 of this Subpart; and

xxii. LGBTQ issues.

xxiii. 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;

xiv. the proper use of child safety restraints required by these regulations and state law (see reference sheet for training resources);

b. 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.

c. The provider shall maintain sufficient information available to determine content of training. This information shall be available for review.

d. 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. No staff member shall be left unsupervised with residents or children of residents until he/she has completed all required training.

e. 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.

f. Staff in facilities licensed to care for children under age two years or facilities providing services for children of residents shall annually complete the “Reducing the Risk of SIDS in Early Education and Child Care” training available at www.pedialink.org. 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 of residents as necessary to ensure the health, safety and well-being of residents and children of residents. 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 of residents, and shall assure the continual safety, protection, direct care, and supervision of residents and children of

residents. 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 of residents present. There shall always be a minimum of two staff present when children of residents are on the premises.

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. Between 9:00 p.m. and 6:00 a.m., the ratio of 1 staff to every 12 residents is acceptable only if the residents are in their assigned bedrooms and participating in rest time. In addition, there shall be 1 additional staff person for every 6 children of residents present. There shall always be a minimum of 2 staff present when children of residents are on the premises, regardless of the number of children of residents present.

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) of resident(s).

v. Management or other administrative staff may be included in ratio only if they are exclusively engaged in providing supervision of the residents or direct supervision of the children of residents.

vi. Staff are allowed to sleep, during nighttime hours, only if the following are met:

(a). There is a functional security system monitored by an alarm company. 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 of resident bedroom doors.

vii. When residents or children of residents are away from the facility, staff shall be available and accessible to the residents and children of residents 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 of residents 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 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 of a resident 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, or the device shall be placed in the resident's room during nighttime hours and removed in the morning allowing the resident privacy.

xiv. Children of residents 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 and directly supervise residents and/or children of residents 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 within one week of hire and prior to having responsibility for residents or children of residents and updated annually. 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 DCFSS, 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 DCFSS; and
- iv. allowing for normalcy for the resident or child of a resident 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 of residents. 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 of a resident 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. Documentation must include, at a minimum, date, time, destination, name of person with whom resident leaves premises.

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 of residents. If an individual has previously obtained a certified copy of their criminal background check 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. This certified copy of the 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 staff is no longer allowed on the premises until a clearance is received.

(b). no person, having any supervisory or other interaction with residents or children of residents, 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).

(c). 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. written job description signed and dated by individual staff;

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 addressing the quality of work to include staff person's interaction with residents and children of residents, family, and other providers. The evaluations are completed by the program director and signed and dated by program director and staff;

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 RS 46:1414.1. SCR-1 forms shall be dated no earlier than 30 days of the individual being present in the facility or having access to the residents or children of residents. 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 DCFCS, 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 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:I.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 residents or children of 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 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, 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. Records

a. 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.

b. 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.

c. The provider shall have sufficient space, facilities, and supplies for providing effective record keeping services.

4. Resident Record

a. Active Record. The provider shall maintain a separate active record for each resident and child of a resident. The records shall be current and complete and shall be maintained in the facility in which the resident and child of a resident 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 timeout, 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, if indicated 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. immunization record within 30 calendar days of admission; and

xxiii. a discharge summary.

c. Each child of a resident'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 of the resident 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 of the resident may be released, including child care facilities, transportation services, or any person or persons who remove the child of the resident from the facility.

(a). The provider shall verify the identity of the authorized person prior to releasing the child of a resident.

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 responsibilities of meeting the child of the resident'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. Authorization 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.

5. Staff Communication

a. The provider shall establish and follow procedures to assure adequate communication among staff to provide continuity of services to the residents and children of residents. This system of communication shall include recording and sharing of daily information noting unusual circumstances, individual and group problems of residents and children of residents, and other information requiring continued action by staff. Documentation shall be legible, signed, and dated by staff.

b. A daily log/record for all children of residents, to include first and last name and in/out times shall be maintained. This record shall accurately reflect all children of residents on the premises at any given time.

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 of a resident, and his/her family and shall not disclose or knowingly permit the disclosure of any information concerning the resident, child of a resident or his/her family, directly or indirectly, to other residents or children of residents 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 of a residents' 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 disguised or deleted, and written authorization is obtained from the resident or his/her legal guardian(s).

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 of a resident's assigned caseworker, and the Licensing Section as noted in subpart D.1.b below:

- 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 of a resident, i.e., elopement or unexplained absence of a resident or child of a resident;
- 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 and Louisiana Child Protection Statewide Centralized Intake Hotline 1-855-4LA-KIDS in accordance with state law;

iii. submit a written critical incident report form within 24 hours of the incident to Louisiana Child Protection Statewide Centralized Intake Hotline and Licensing Section ;

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 of a resident's record;

vii. ensure that a staff person accompanies residents and children of residents when emergency services are needed.

2. Other Incidents. The provider shall have and adhere to 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 of a resident.

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 of a resident excluding those identified in Subparagraph D.1.a of this Section within 24 hours of the incident.

3. When a child of a resident 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 for a resident or child of a resident 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 of residents, or staff involved in the incident;
- e. immediate treatment provided, if any;
- f. symptoms of pain and injury discussed with the physician;
- g. date and signature of the staff completing the report;

- h. name and address of witnesses;
- i. date and time the legal guardian, child welfare, licensing, and law enforcement (if applicable) 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 of a resident'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 Louisiana child protection Statewide Centralized Intake Hotline and applicable laws;

b. ensures the resident and child of a resident are protected from potential harassment during the investigation;

c. ensures that the provider shall not delay reporting suspected abuse and/or neglect to the Louisiana Child Protection Statewide Centralized Intake 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 of a resident involved in the program until an internal investigation is conducted by the facility or the child protection unit staff 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 of a resident 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 Centralized Intake 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 section. 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 of a resident's injury, neglect or condition;

f. current circumstance of resident or child of a resident and if resident or child of a 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 of a resident, 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 and adhere to 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. Each resident shall be fully informed of the grievance and complaint policy and procedure and be provided with a written copy. Each resident's record shall contain written acknowledgement signed and dated by program director or designee and resident of understanding and receipt of grievance and complete policies and procedures.

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 and adhere to 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 of resident'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 and adhere to written strategies to foster ongoing positive communication and contact between children of residents, 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 resident 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 the 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 and adhere to 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 of residents 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 of a resident;
- vii. authorization to obtain medical care for the resident and child of a resident;
- 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 of a resident, 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 or obtained 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 on behalf of the resident 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 a reputable 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 and date 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 and quarterly review 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 staff 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 seven 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.

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 36:818 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:984 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 42:

§7115. Resident Protection

A. Rights

1. Provider Responsibility

a. The provider shall have written policies and procedures that ensure each resident's and child of a resident'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 and indicated in 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 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 of residents have the right to personal privacy and confidentiality. Any records and other information about the resident or child of a resident

shall be kept confidential and released only with the legal guardian's expressed written consent or as required by law.

b. A child of a resident 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 of the resident and resident.

c. Residents nor children of residents shall participate in research projects without the express written consent of the resident, child of the resident, and the legal guardian(s).

d. Residents nor children of residents shall participate in activities related to fundraising and publicity without the express written consent of the resident, child of the resident, and the legal guardian(s).

3. Contact with Family and Collaterals

a. A child of a resident 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 of a resident or resident. The reasons for any special restrictions shall be recorded in the child of the resident's record or resident's service plan, as applicable and explained to the child of the resident, 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 of the resident's record or resident's service plan, as applicable. Home visits shall be approved by the legal guardian.

b. A child of a resident and resident have the right to telephone communication. The provider shall allow children of residents and residents to receive and place telephone calls in privacy subject only to reasonable rules and to any specific restrictions in the child of the resident's record or resident's service plan, as applicable. The service plan manager shall formally approve any restriction on telephone communication in a child of the resident'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 of the resident'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 of a resident and their legal counsel.

c. A child of a resident and resident have the right to send and receive mail. The provider shall allow children of residents and residents to receive mail unopened, uncensored, and unread by staff unless contraindicated in the child of a resident'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 of a resident's or resident's legal counsel shall not be opened, read, or otherwise

interfered with for any reason. Children of residents and residents shall have access to all materials necessary for writing and sending letters and when necessary, shall receive assistance.

d. Children of residents 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 of residents and residents have the right to communicate freely and privately with state and local regulatory officials.

4. Safeguards

a. Residents and children of residents have the right to file grievances without fear of reprisal as provided in the grievances section of these standards.

b. Residents and children of residents 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 of residents 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 of residents' civil rights shall be abridged or abrogated solely as a result of placement in the provider's program.

b. A resident nor child of a resident 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. Residents and children of residents have the right to be treated with dignity in the delivery of services.

b. Residents and children of residents have the right to receive preventive, routine, and emergency health care according to individual needs which will promote his or her growth and development.

c. Residents and children of residents have the right to be involved, as appropriate to age, development, and ability in assessment and service planning.

d. Residents and children of residents 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 or punished for not participating in religious services. The provider shall have and adhere to 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 of a resident, 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 of residents who desire to participate in religious activities in the community.

7. Acknowledgement of Resident

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.

b. Each resident shall be informed of how and where to safely evacuate the facility during an emergency situation. The acknowledgement of understanding shall be signed and dated by the resident and program director, or designee.

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 of residents. 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 of a resident'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 of a resident 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 of residents 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 of residents 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;
- 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 of a resident or resident to exercise as punishment or placing a child of a resident or resident into uncomfortable positions;
- gg. exposing a child of a resident or resident to extreme temperatures or other measures producing physical pain;
- hh. putting anything in a resident's or child of a resident's mouth as a means of punishment;
- ii. using abusive or profane language, including but not limited to telling a child of a resident to "shut up"; or
- jj. any technique that involves covering of the mouth, nose, eyes or any part of the face.

2. The resident and child of a resident, 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 of the resident 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 and adhere to a behavior support and intervention program that:

- a. describes the provider's behavior support philosophy;
- b. safeguards the rights of residents, children of residents, families, and staff;
- c. governs allowed and prohibited practices; and
- d. designates oversight responsibilities.

2. The provider shall have and adhere to 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 of residents;
- 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 and adhere to 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 of a resident 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 of a resident'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 for residents age 6 and above;

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 activities 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 of a resident 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 of residents or residents 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 and adhere to 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 upon completion of training.

F. Seclusion

1. The provider shall have and adhere to 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. one hour for a resident under nine years old; or
- b. two 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 upon completion of training.

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 constructed of safe material with give that can be easily cleaned. Nothing shall protrude or extend from the wall.

f. The door of the room shall swing outward to prevent a person from blocking the door from opening and thus barricading himself in the room.

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 36:819 (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:

§7117. Provider Services

A. Education

1. The provider shall have and adhere to written policies and procedures to ensure that each resident and child of a resident has access to the most appropriate educational services consistent with the resident's and child of a resident'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 of a resident'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 of residents with disabilities shall be identified to the local education agency. If the resident or child of a resident 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 of a resident 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 of a resident 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 of a resident's IEP or individualized accommodations plan (IAP), and to ensure that the resident's or child of a resident'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 residents 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' participation in school-related extracurricular activities, including any related fees or costs for necessary equipment.

9. The provider shall coordinate children of residents' participation in school-related extracurricular activities, including any related fees or costs for necessary equipment.

10. Whether educational services are provided on or off-site, the provider shall notify the resident'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 of a resident's record.

11. The provider shall notify the resident or child of a resident's legal guardian(s) verbally and in writing within 24 hours of any truancy, expulsion, suspension, or informal removal of their child from school. Notification shall be documented in the child of the resident's record.

12. All residents and children of residents shall receive a free and appropriate education. If transportation is not provided by the local educational authority, the provider shall transport the resident or child of a resident to school or other educational program in order for the resident to fulfill the requirements of their educational program.

13. When children of residents 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 of residents to and from the bus.

14. 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's 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 residents 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 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. Daily Living Responsibilities

1. Routines

a. The provider shall have and adhere to 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 and adhere to written policies regarding a daily schedule for children of residents 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 of residents' 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 of residents to bring their personal possessions and display them, when appropriate.

b. Residents and children of residents 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 of a resident 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 of a resident 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 of a resident;

ii. date and time of confiscation; and

iii. date and time when returned to resident or child of a resident and signature of resident or child of resident.

iv. description of items confiscated and reason confiscated.

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 of residents 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 of a resident should be involved in selecting their clothing.

b. The provider shall have and adhere to 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 of residents 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 of a resident and not be required to be shared.

f. All clothing provided to a resident or child of a resident shall remain with the resident or child of a resident upon discharge.

g. The provider shall ensure residents and children of residents 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 (as applicable);
- iii. day-to-day care of infants, children and adolescents (as applicable);
- iv. disciplinary techniques for infants, children, and adolescents (as applicable);
- 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 of a resident, as age appropriate, to possess his/her own money. The provider can give the resident or child of a resident an allowance. Residents and children of 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 of a resident, shall be deemed to be that individual's personal property;

c. limitations may be placed on the amount of money a resident or child of a resident 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 of a resident's record. The reasons for any limitations should be fully explained to the resident, child of the resident, 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 program director 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 of a resident's money; and

f. upon discharge, the provider shall provide the resident, child of a resident, or legal guardian(s) any outstanding balance.

6. Work

a. The provider shall have and adhere to 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 of residents 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 of a resident's record relating to special nutritional needs; and
- j. providing information on residents' and children of residents' diets to staff.

2. The provider shall have and adhere to written policies and procedures that ensure that residents and children of residents 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 of a resident. Two of the three meals (breakfast, lunch, supper) served shall be hot meals. Residents and children of residents shall also be provided with a snack between meals and prior to bedtime. Breakfast shall be served within at least 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 in an area regularly used by residents.
- 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 of a resident shall be:

a. prescribed by the individual's physician, approved by the registered dietician, and identified in the resident's service plan or child of a resident'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 of residents, unless special dietary requirements dictate differences in diet.

7. Food provided to a resident or child of a resident shall be in accordance with his/her religious beliefs.

8. No resident or child of a resident 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 and adhere to written policies and procedures to ensure that all food shall be stored, prepared, and served under sanitary conditions. e The provider shall ensure that:

- a. food served to the resident or child of a resident is in a form consistent with the developmental level of the individual ; and with appropriate utensils;
- b. food served to a resident or child of a resident 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 written order of a physician or as documented in the

instructions of the formula. The timeframe shall not be extended beyond the physician's written 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 and adhere to written policies and procedures for providing preventive, routine, and emergency medical and dental care for residents and children of residents 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 of a resident;

ii. provision of health education, as appropriate;

iii. provision for maintaining current immunizations;

iv. approaches that ensure that any medical service administered will be explained to the resident or child of a resident 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 of residents 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 of a resident within a week of admission unless the resident or child of a resident 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 of a resident is being transferred from another residential home and has had a physical examination within the last 12 months, a copy of this examination may be obtained to meet the requirement of the admission physical. The physical examination shall include:

i. an examination of the resident or child of a resident 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 of resident's general health.

b. The provider shall arrange an annual physical examination of all residents and children of residents.

c. Whenever indicated, the resident or child of a resident shall be referred to an appropriate medical specialist for either further assessment or service, including gynecological services for female residents or children of residents. 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 of a resident 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 of a resident'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 of a resident's record.

3. Dental Care

a. The provider shall have and adhere to 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 of residents to brush their teeth at least twice per day.

b. The provider shall arrange a dental exam for each resident and child of a resident 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 of residents 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, immediately when a resident or child of a resident 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 and adhere to 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 of a resident's immunization history, ensuring that the resident and child of a resident 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 of a resident's record.

5. Medications

a. The provider shall have and adhere to 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 of residents on pass; and

iv. a plan of action for residents and children of residents 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 of a resident 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, providers licensed to care for children of residents or licensed to care for residents under five years of age shall have staff trained in medication administration. Trained staff shall be scheduled for each shift when residents under five years of age or children of residents under five years of age are present on the premises. 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 of resident's name, date, medication name, dosage, and time administered;

ii. signature of person administering medication; and

iii. signature of person witnessing resident or child of resident 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 of resident refuses to take medication, the physician ordering the medication shall be immediately notified and documentation noted to include:

i. resident's or child of resident's name, date, and time;

ii. medication name and dosage;

iii. person attempting to administer medication, if other than resident or child of resident;

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 of resident for therapeutic and/or medical purposes is in accordance with the written order of a physician.

h. There shall be no standing orders for prescription medications.

i. 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.

j. Copies of all written orders shall be maintained in the resident's or child of a resident's record.

k. Medication shall not be used as a disciplinary measure, a convenience for staff, or as a substitute for adequate, appropriate programming.

l. Prescription medications shall be reviewed and renewed on at least an annual basis by a licensed physician; however psychotropic medications shall be reviewed and renewed at least every 90 days by a licensed physician.

m. Residents and children of residents shall be informed of any changes to their medications, prior to administration of any new or altered medications.

n. 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.

o. 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 of a resident's record and the legal guardian(s) shall be notified verbally or in writing within 24 hours.

p. Discontinued and outdated medications and containers with worn, illegible, or missing labels shall be properly disposed of according to state law.

q. 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.

r. All medications shall be maintained in the original container/packaging or as dispensed by the pharmacist.

s. A plan of care shall be developed for each resident or child of a resident 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.

t. 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.

u. 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 of residents 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 of a resident;
- ii. provide quarterly written summaries of the resident's or child of a resident's response to the service, the resident's or child of a resident's current status relative to the service, and the resident's or child of a resident's progress;
- iii. participate, as appropriate, in the development, implementation, and review of resident's service plans and aftercare plans and participates 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 of residents are evaluated for specialized services in a timely manner when a need is identified.

E. Recreation

1. The provider shall have and adhere to 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 of residents 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 of residents served. In planning recreational programs and activities, staff should assess the ages, interests, abilities and developmental and other needs of the residents and children of residents served to determine the range of activities that are safe and appropriate. Residents and children of residents 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 music, 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. The provider shall provide adequate recreation and yard spaces to meet the needs and abilities of residents and children of residents 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 of residents, their ages and needs, and should allow for imaginative play, creativity, and development of leisure skills and physical fitness.

5. 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 and adhere to 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 of residents in cases of emergency.

3. The provider shall ensure and document that any vehicle used in transporting residents or children of residents, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, is licensed in accordance with state law and carries current liability insurance.

4. All vehicles used for the transportation of residents or children of residents shall be maintained in a safe condition and in conformity with all applicable motor vehicle laws.

5. 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.

6. 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 of residents 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.

7. The provider shall not transport residents nor children of residents in the back or the bed of a truck.

8. The provider shall conform to all applicable state motor vehicle laws regarding the transport of residents and children of residents.

9. The provider shall ensure that residents and children of residents being transported in the vehicle are properly supervised while in the vehicle and during the trip. Residents nor children of residents are to be unattended in the vehicle.

10. Vehicles used to transport residents and children of residents shall not be identified in a manner that may embarrass or in any way produce notoriety for residents or children of residents.

11. The provider shall ascertain the nature of any need or problem of a resident or child of a resident 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 individual of any vehicle transporting residents or children of residents.

12. The following additional arrangements are required for a provider serving residents or children of residents with physical limitations:

a. a ramp device to permit entry and exit of a resident or child of a resident from the vehicle shall be provided for all vehicles except automobiles normally used to transport physically handicapped residents or children of residents. 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.

13. No resident or child of a resident 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.

14. Only one resident or child of a resident shall be restrained in a single safety belt.

15. All aspects of the vehicle shall be maintained in good repair including, but not limited to proper working order of doors, lights, tires, etc.

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;

16. 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 of residents is prohibited.

17. The number of persons in a vehicle used to transport residents or children of residents shall not exceed the manufacturer's recommended capacity.

18. The vehicle shall have evidence of a current safety inspection.

19. A visual inspection of the vehicle is required to ensure that no child of a resident or resident 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. 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. The staff conducting the visual check for all transportation, shall document the time of the visual check inspection and sign his or her full name, indicating that no child of a resident or resident was left on 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 of residents 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 of residents.

e. Playground equipment shall be so located, installed, and maintained as to ensure the safety of residents and children of residents.

4. Residents and children of residents 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. In facilities licensed to care for residents less than 10 years of age or licensed to accept children of residents, the outdoor play space 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. In facilities licensed to care for residents less than 10 years of age or licensed to accept children of residents, 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. In facilities licensed to care for residents less than 10 years of age or licensed to accept children of residents, 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 residents and children of residents shall be maintained in a clean, safe condition and in good repair.

11. In facilities licensed to care for residents less than 10 years of age or licensed to accept children of residents, all 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.

12. The use or possession of alcohol, tobacco in any form, illegal substances, or unauthorized potentially toxic substances on the premises of the residential home is prohibited.

B. Interior Space

1. The provider shall have and adhere to 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 of residents 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 residents or children of residents shall be equipped with monitoring or filtering software, or an analogous software protection, that limits 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 resident's and children of resident's reach so that they may select and return items independently.

9. At least one corded land line capable of incoming and outgoing calls for emergency purposes shall be accessible to residents and children of residents at all times at the facility.

C. Dining Areas

1. The provider shall have dining areas that permit residents, children of residents, staff, and visitors 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 of a resident 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 of residents shall be decorated to allow for the personal tastes and expressions of the residents and children of residents.

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 or child of a resident over the age of five years shall occupy a bedroom with a member of the opposite sex, unless that individual is the child's parent in accordance with R.S. 46:1403 or the child's sibling.

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 of a resident age 1 year and above shall have his/her own bed. The bed shall be longer than the resident or child of a resident 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 of a resident:

a. enuretic residents and children of residents 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 2 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 shall have his/her own nightstand. Each resident shall have his/her own 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 of a resident. 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 of residents 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 of residents' basic hygienic needs.

7. Each resident and child of a resident 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 of residents. Bathrooms shall be large enough to permit staff assistance of residents and children of residents, 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 of residents, 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 of residents in care.

3. The provider shall ensure that all dishes, cups, and glasses used by residents and children of residents are free from chips, cracks, or other defects and are in sufficient number to accommodate all the residents and children of 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 of residents' 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 of residents, and staff. If there is a window in the space, it shall have a covering to provide privacy during private discussions.

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 of residents shall be appropriately designed to suit the size and capabilities of these residents and children of residents.

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 in all indoor public and private areas of the facility 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 of residents 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 of residents.

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 infant'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 immediately 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 of residents in the event of any emergency. The written overall plan of emergency procedures shall:

a. provide for the evacuation of residents and children of residents 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 of residents 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 of residents 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 of residents 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 of a resident with special needs;

l. ensure that residents and children of residents 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. 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 of residents 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 of residents 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 of residents 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 and adhere to 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 use or possession of any firearm (loaded or unloaded), pellet or BB gun (loaded or unloaded), or chemical weapon on the premises of the residential home is prohibited 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 of residents, 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 of residents.

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 of residents 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:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? There is no effect on 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? There is no effect on the rights of the persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This proposed Rule allows children of residents in residential homes to reside with their parents in an environment which is supervised and with staff that model appropriate behaviors.

4. What effect will this have on family earnings and family budget? There is no effect on the family earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? There is no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No.

Poverty Impact Statement

The proposed rulemaking is not anticipated to have an impact on poverty as defined by R.S. 49:973.

Small Business Impact Statement

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

All interested persons may submit written comments through December 28, 2016, to Rhenda Hodnett, Assistant Secretary for Child Welfare, Department of Children and Family Services, P.O. Box 3776, Baton Rouge, LA 70821.

Public Hearing

A public hearing on the proposed Rule will be held on December 28, 2016, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit or Division of Administrative Law at least seven working days in advance of the hearing. For assistance, call (225)342-4120 (Voice and TDD).

Marketa Garner Walters
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Residential Home

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend LAC Title 67, Part V, Subpart 8, Chapter 71 to incorporate regulations pertaining to the inclusion of children as residents in residential homes authorized with Act 502 of 2016. The purpose of these amendments is to enact licensing standards that protect the safety and well-being of youths (age 16-21) and children (under 18) residing in residential homes with their parents.

In addition, in accordance with R.S. 46:1407(D) that requires a comprehensive review of licensing standards every 3 years, DCFS completed a review of the current standards and revised the licensing standards to protect the health, safety, and well-being of the residents of the state who are in out-of-home care on a regular or consistent basis. The substantive changes from the comprehensive review include technical changes such as re-organization of sections, adding clarifying language such as definitions, codified current practices such as license not being issued until all deficiencies are cleared, and provide a formal process for providers to challenge deficiencies cited, and allow DCFS to promulgate rules on sanctions for cited violations before issuing penalties and fines.

The only cost of this proposed rule is the cost of publishing rulemaking, which is estimated to be approximately \$70,929 (\$23,643 State General Funds and \$47,286 Federal Funds) in FY 16-17. This is a one-time cost that is routinely included in the department's annual operating budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is anticipated to result in a minimal increase in licensing fee revenues depending on the number of

specialized residential facilities seeking licensing. Implementation of this rule will have no effect on local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule enacts standards that protect the health, safety and well-being of residents including youth and children in residential homes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Rhenda Hodnett
Assistant Secretary
1611#044

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Economic Development
Office of Business Development**

**Industrial Ad Valorem Tax Exemption Program
(LAC 13:I.Chapter 5)**

This proposed Rule is being promulgated in the *Louisiana Register* as required by R.S. 47:4351 et seq. The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 hereby proposes to enact §§501 and 502 and to amend and reenact §§503-537 for the administration of the Industrial Ad Valorem Tax Exemption Program in LAC 13:I.Chapter 5 to implement programmatic changes in alignment with Executive Orders 16-26 and 16-73.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 5. Industrial Ad Valorem Tax Exemption Program

§501 Statement of Purpose

A. New Rules

1. These rules amend and restate prior rules and upon adoption are to implement two important policies for the industrial tax exemption property tax exemption. The first is as a competitive incentive for job creation and under compelling circumstances, job retention. The second is to provide for input from local parish and municipal governments, school boards and sheriffs as to the extent of, and other terms and conditions for the Industrial Tax Exemption.

2. On all projects, applicant manufacturers are to demonstrate a genuine commitment to investing in the communities in which they operate, and a genuine commitment to creating and retaining jobs in those communities. These are the expectations for the program's future, and the board will continue to operate it in a way that makes Louisiana competitive with other states in securing good jobs for our citizens while giving local governments a voice in their taxation. These rules are to be interpreted in a manner so as to promote these goals.

B. Applicability of Prior Rules. Just as the board is promoting job growth and economic development and

extending fairness to communities, the board is promoting fairness to manufacturers who have acted in accordance with prior rules. Contracts for the industrial property tax exemption and the renewal of the exemption and projects found to be pending as defined by Executive Order JBE 16-26 are to be treated fairly under the rules that were in place at the time of the contracts and prior to the new rules. Louisiana honors its commitments and the rules governing existing contracts and applications not subject to the new rules are to be interpreted in order to promote fairness and commitment.

C. Going Forward

1. Louisiana values its manufacturers and their contributions to its economy. The board's policies going forward are to provide all a seat at the table to determine the best investment outcome for our industries and our communities.

2. All rules in this chapter are intended to align with the above purpose while providing a process that balances accountability with reasonable administrative burden for state and local government and applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and R.S. 47:4351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:

§502. Definitions

Addition to a Manufacturing Establishment—

1.a. a capital expenditure for property that would meet the standard of a new manufacturing establishment if the addition were treated as a stand-alone establishment;

b. a capital expenditure for property that is directly related to the manufacturing operations of an existing manufacturing establishment; or

c. an installation or physical change made to a manufacturing establishment that increases its value, utility or competitiveness;

2. maintenance capital, environmentally required capital upgrades, and replacement parts, except those replacements required in the rehabilitation or restoration of an establishment, to conserve as nearly, and as long as possible, original condition, shall not qualify as an addition to a manufacturing establishment;

3. expenses associated with the rehabilitation or restoration of an establishment as provided for in Section 511 shall be included as an addition to a manufacturing establishment

*Beginning of Construction—*the first day on which foundations are started or, where foundations are unnecessary, the first day on which installations of the manufacturing establishment begins

*Board—*Board of Commerce and Industry

*Capital Expenditure—*the cost associated with a new manufacturing establishment or an addition to an existing manufacturing establishment, including the purchasing or improving real property and tangible personal property, whose useful life exceeds one year and which is used in the conduct of business

*Environmentally Required Capital Upgrades—*upgrades required by any state or federal governmental agency in order to avoid fines, closures or other penalty

*Establishment—*an economic unit at a single physical location

Integral—required to make whole the product being produced

Job—positions of employment that are:

1. new (not previously existing in the state) or retained;
2. permanent (without specific term);
3. full-time (working 30 or more hours per week);
4. employed directly, by an affiliate or through contract labor;
5. based at the manufacturing establishment;
6. filled by a United States citizen who is domiciled in Louisiana or who becomes domiciled in Louisiana within 60 days of employment; and
7. any others terms of employment as negotiated in the Exhibit A or Exhibit B.

LED—Louisiana Economic Development

Local Governmental Entity—parish governing authority, school board, Sheriff, and any municipality in which the manufacturing establishment is or will be located

Maintenance Capital—costs incurred to conserve as nearly as possible the original condition

Manufacturer—a person or business who engages in manufacturing at a manufacturing establishment

Manufacturing—working raw materials by means of mass production or custom fabrication and machinery into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process. The resulting products must be “suitable for use” as manufactured products that are placed into commerce for sale or sold for use as a component of another product to be placed, and placed into commerce for sale.

Obsolescence—the inadequacy, disuse, outdated or non-functionality of facilities, infrastructure, equipment or product technologies due to the effects of time, decay, changing market conditions, invention and adoption of new product technologies or changing consumer demands.

Qualified Disaster—

1. a disaster which results from:
 - a. an act of terror directed against the United States or any of its allies; or
 - b. any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises;
2. any disaster which, with respect to the area in which the property is located, resulted in a subsequent determination by the President of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
3. a disaster which is determined by an applicable federal, state, or local authority (as determined by the Secretary) to warrant assistance from the federal state or local government or agency of instrumentality thereof; or
4. any other extraordinary event that destroys or renders all or a portion of the manufacturing establishment inoperable

Rehabilitation—the extensive renovation of a building or project that is intended to cure obsolescence or to repurpose a facility

Restoration—repairs to bring a building or structure to at least its original form or an improved condition

Secretary—Secretary of Louisiana Economic Development

Site—One or more contiguous parcels of land which are under the control of the manufacturing establishment or which contains certain assets of the manufacturing establishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and R.S. 47:4351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:

§503. Advance Notification; Application

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities on all projects for tax exemption except as provided in §505.A and B of these rules. An advance notification fee of \$250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification. The estimated project ending date as stated on the advance notification may be amended by the applicant if the amendment is made prior to the estimated project ending date.

B. All financial incentive programs for a given project shall be filed at the same time and on the same advance notification. The applicable advance notification fee for each program for which the applicant anticipates applying shall be submitted with the advance notification.

C. An application for tax exemption may be filed with OBD on the prescribed form:

1. either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;
2. the deadline for filing the application may be extended pursuant to §523;
3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with OBD on the prescribed form by December 31, until the project completion report and affidavit of final cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract.

D. In order to receive the board’s approval, applications with advance notifications filed after June 24, 2016, shall contain both of the following:

1. An exhibit “A” consisting of a fully executed cooperative endeavor agreement between the state, Louisiana Economic Development and the applicant specifying the terms and conditions of the granting of the exemption contract.
 - a. The terms and conditions of the exhibit “A” shall include the following:
 - i. either number of jobs and payroll to be created at the project site or the number of jobs and payroll to be retained at the project site where applicable;
 - ii. the term of the exemption contract which shall be for up to, but no more than five years and may provide for an ad valorem exemption of up to 100 percent and terms

for renewal may be included provided that the renewal of the contract shall be for a period up to, but no more than three years and may provide for an ad valorem tax exemption of up to, but no more than 80 percent;

iii. the percentage of property eligible for the exemption;

iv. any penalty provisions for failure to create the requisite number of jobs or payroll at the project site, including but not limited to, a reduction in term, reduction in percentage of exemption, or termination of the exemption; and

v. a statement of return on investment (ROI) as determined by the secretary.

2. An exhibit "B" consisting of resolutions adopted by the parish governing authority, the school board, the Sheriff, and any municipality in which the manufacturing establishment is or will be located signifying whether each of these authorities is in favor of the project.

a. Exhibit "B" shall include provisions addressing the following:

i. the number of jobs and payroll to be created at the project site required by the local governmental entity for approval of the exemption;

ii. the term of the exemption contract approved by the local governmental entity; and

iii. the percentage of property eligible for the exemption approved by the local governmental entity.

b. LED will provide guidance to local governmental entities as to suggested alternatives as it relates parameters for job creation, payroll, percentage of exemption and length of contract.

3. The board shall consider the information collected and the provisions of exhibits "A" and "B" in determining whether to approve the contract for exemption and the renewal thereof.

4. If the terms of exhibit "A" and exhibit "B" as it relates to the term of the exemption, and the percentage of property tax eligible for exemption are not the same, the provisions of exhibit "B" shall prevail.

E.1. Applications which provide for a new manufacturing establishment or which provide for an addition to a manufacturing establishment with the creation of new jobs or a compelling reason for the retention of existing jobs shall be favored by the board.

2. In determining whether a company has presented a compelling reason for the retention of existing jobs, the following situations may be considered:

a. to prevent relocation to another state or country;

b. to provide an advantage for investment from a company with multi-state operations with an established competitive capital project program;

c. to employ best practice or innovative, state of the art technology for the establishment's industry;

d. to increase maximum capacity or efficiency; or

e. to provide the state a competitive advantage as determined by the secretary or by the board.

F. An application fee shall be submitted with the application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

G. OBD reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the form is incomplete or incorrect or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

H. If the application is submitted after the filing deadline, the term of exemption available under an initial contract and renewal thereof shall be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction up to the maximum remaining term. The board may impose any other penalty for late filing that it deems appropriate.

I. The department will provide a copy of the application and all relative information to the Louisiana Department of Revenue (LDR) for review. LDR may require additional information from the applicant. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action.

J. Eligibility of the applicant and the property for the exemption, including whether the activities at the site meet the definition of manufacturing, will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered by the Board of Commerce and Industry. The property exempted may be increased or decreased based upon review of the application, project completion report or affidavit of final cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to review and approval of the project completion report and affidavit of final cost. If the applicant fails to timely file the project completion report or affidavit of final cost the board may, after notice to the applicant, terminate the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), LR 41:2318 (November 2015), LR 42:

§505. Miscellaneous Capital Additions

A. Miscellaneous capital additions which had pending contractual applications on June 24, 2016, and which provide for new jobs at the completed manufacturing establishment shall be considered by the board.

B. Miscellaneous capital additions which did not have a pending contractual application as of June 24, 2016 or those with pending applications as of June 24, 2016, but do not provide for new jobs, are not eligible for the property tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 41:2318 (November 2015), LR 42:

§507. Eligible Property—Buildings and Facilities Used in Manufacturing; Leased Property; Capitalized Materials

A. The board shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §§517 and 519) and additions to manufacturing establishments within the state of Louisiana. Exemptions are granted to the owners of buildings that house a manufacturing establishment and facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and
2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:
 - a. buildings to house a manufacturing establishment;
 - b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process;
3. owners who are not engaged in manufacturing at the manufacturing establishment are eligible for the exemption only if the manufacturer at the site is obligated to pay the property taxes if the exemption were not granted.

B. Leased property is eligible for the exemption, if the property is used in the manufacturing process, is and remains on the plant site, and the manufacturer is obligated under the lease agreement to pay the property taxes if the exemption were not granted.

C. Capitalized materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing establishment. Some examples of these are:

1. ammonia in a freezing plant;
2. solvent in an extraction plant; and
3. catalyst in a manufacturing process.

D. To be eligible for exemption, a manufacturing establishment must be in an operational status and engaged in manufacturing. An owner of a new manufacturing establishment under construction may apply for an exemption with the expectation that the manufacturing establishment will become operational. If the manufacturing establishment fails to become operational or ceases operations without a reasonable expectation of recommencing operations, the facility shall no longer be eligible for exemption and its contract shall be subject to termination under §531.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 42:

§509. Integral Parts of the Manufacturing Operation

A. Property that is an integral part of the manufacturing operation is eligible for the tax exemption.

B. The following activities are considered to be integral to the manufacturing process:

1. quality control/quality assurance;
2. packaging;
3. transportation of goods on the site during the manufacturing process;
4. other on site essential activities as approved by the secretary and the board.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 42:

§511. Rehabilitation and Restoration of Property

A. Capital expenditures for the rehabilitation or restoration of an existing establishment may be exempted if it is not maintenance. If replacements or upgrades are made as part of a rehabilitation or restoration to an establishment, only the capital expenditures in excess of original cost shall be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will result in capital additions that exceed \$50,000,000.

B. Exemption may be granted on the costs of rehabilitation or restoration of a partially or completely damaged facility, but only on the amount in excess of the original cost.

C. Original costs deducted from rehabilitation or restoration made or rebuilding shall be clearly documented.

D. A deduction for the original cost of property to be replaced as part of a rehabilitation or restoration, as provided by Subsections A or B, shall not be made if the project is related to the replacement or reconstruction of property after the destruction of or damage to such property, as a result of a qualified disaster.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 42:

§513. Relocations

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted at the original location.

B. If a manufacturing establishment moves from one location in the state to another location within the state, the company shall be required to seek approval of the parish governing authority, the school board, the Sheriff, and any municipality in which the manufacturing establishment will be located if these local governing authorities are different than those that approved the exemption at the original site.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003), LR 37:2378 (August 2011), LR 42:

§515. Used Equipment

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VD, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 42:

§517. Ineligible Property

A. Maintenance capital, environmentally required capital upgrades and new replacements to existing machinery and equipment, except those replacements required in the rehabilitation or restoration of a facility, are not eligible for the tax exemption.

B. If the establishment or addition is on the taxable rolls and property taxes have not been paid, the establishment or addition is not eligible for the exemption unless the assessor and local governmental entity agree in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

C. The board shall not consider for tax exemption any property listed on an application on which ad valorem property taxes have been paid.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 42:

§519. Land

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 42:

§521. Inventories

A. The following are not eligible for tax exemption:

1. inventories of raw materials used in the course of manufacturing;

2. inventories of work-in-progress or finished products;

3. any other consumable items.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 42:

§523. Extension of Time

A. OBD may grant an extension of up to six months for the filing of an application (§503.B.), a project completion

report (§525), or an affidavit of final cost (§527), provided the request for extension is received prior to the filing deadline.

B. Additional extensions of time may be granted for good cause.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 42:

§525. Effective Date of Contract; Project Completion Report

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The owner must file that information with OBD on the prescribed project completion report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. A project completion report fee of \$250 shall be submitted with the form. The deadline for filing the project completion report may be extended pursuant to §523.

B. The effective date of tax exemption contracts for property located in parishes other than Orleans Parish shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever occurs first. The effective date of tax exemption contracts for property located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development LR 37:2379 (August 2011), LR 41:2318 (November 2015), LR 42:

§527. Affidavit of Final Cost

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an affidavit of final cost showing complete cost of the exempted project. A fee of \$250 shall be filed with the affidavit of final cost or any amendment to the affidavit of final cost. Upon request by OBD, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the affidavit of final cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015), LR 42:

§529. Renewal of Tax Exemption Contract

A. Application for renewal of the exemption must be filed with OBD on the prescribed form not more than six months before, and not later than the expiration of the initial contract. A fee of \$250 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the board for an additional period of up to but not exceeding five years.

B. Eligibility of the applicant and the property for renewal of the exemption will be reviewed by the Board using the same criteria that was used for the initial contract, and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract shall be reduced by one year for each calendar month, or portion thereof, that the renewal application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015), LR 42:

§531. Violation of Rules or Documents; Final Inspection

A. The board reserves the right, on its own initiative or upon written complaint of an alleged violation of terms of tax exemption rules or documents, to conduct a final inspection. During the final inspection OBD may cause to be made a full investigation on behalf of the board and shall have full authority for such investigation including authority to demand reports or pertinent records and information from the applicant and complainants. Results of the investigation will be presented to the board.

B. All contracts of exemption shall be subject to the final inspection. If a final inspection indicates that the applicant has violated any terms of the contract or rules, or that the exempt facility is not engaged in manufacturing, the board may conduct a hearing to reconsider the contract of exemption, after giving the applicant not less than 60 days notice.

C. If the board determines that there has been a violation of the terms of the contract or the rules, that the property exempted by the contract is not eligible because it is not used in a manufacturing process, or that the facility has not commenced or has ceased manufacturing operations, the board may terminate or otherwise modify the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 42:

§533. Reporting Requirements for Changes in Operations

A. OBD is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015), LR 42:

§535. Sale or Transfer of Exempted Manufacturing Establishment

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. A fee of \$250 shall be filed with a request to transfer the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015), LR 42:

§537. Reporting to the Parish Assessor

A. The applicant shall file annually with the assessor of the parish in which the manufacturing establishment is located, a complete taxpayer's report on forms approved by the Louisiana Tax Commission, in order that the exempted property may be separately listed on the assessment rolls.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 42:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be sent by email to danielle.clapinski@la.gov. All comments must be received no later than 5 p.m., on December 28, 2016.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on December 29, 2016 at 10 a.m. at the Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
UnderSecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Industrial Ad Valorem Tax Exemption Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no significant costs or savings to state or local governmental units as a result of the proposed rule changes. The Department of Economic Development (DED) intends to administer the program with existing resources and personnel. However, the DED, as well as the LA Department of Revenue may incur marginal administrative costs associated with implementing the proposed rule changes.

Executive orders JBE 16-26 and 16-73 made significant changes to the Industrial Tax Exemption Program (ITEP) and the Board of Commerce and Industry is codifying those changes in the rules for the program. These changes include requiring all projects to file an advance notification, eliminating the miscellaneous capital addition process, and eliminating maintenance, repairs and environmentally required upgrades from eligibility for the tax exemption.

Additionally, the rule changes require that companies who want to participate in the program seek and receive approval from both local and state governments. Firms wishing to participate must file two exhibits, Exhibit "A" and Exhibit "B," which have separate requirements regarding state and local requirements to be eligible for the exemption, respectively. If the terms of Exhibits "A" and "B" differ on the term of the exemption and/or the percentage of property tax eligible for the exemption, the provisions of Exhibit "B" will take precedent.

Furthermore, the term of the renewal contracts is now limited to 3 years and the percentage of exemption for renewed contracts is now 80%. This is a change from the previous practice of renewing contracts for up to 5 years at a 100% exemption percentage. However, advances filed and miscellaneous capital additions approved prior to June 24, 2016 are grandfathered in to the past practice of being renewed for up to 5 years at a 100% exemption percentage. Lastly, the rules establish a definitions section to further clarify and explain portions of the rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes may increase revenues for local governments by an indeterminable amount for a number of reasons. First, some projects that previously filed miscellaneous capital additions, the process for which is being eliminated by the proposed rule changes, could previously file advances. Second, the DED has not previously captured how many ITEP program contracts are for maintenance, repairs, etc., that are no longer eligible for the exemption. As a result the corresponding aggregate value of the aforementioned contract types cannot be determined. Lastly, the DED does not know how many years or percentage of exemption local governing entities will grant, as local governing authorities have the ability to set contract terms and exemption percentages and supersede state terms and percentages under the authority of the proposed rule changes.

The proposed rule changes will not affect revenue collections for state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The incomes of companies that are no longer eligible to participate in the program will decrease in the same amount as any increases in local revenues, as fewer exemptions will likely be granted due to the Executive Orders and the rule changes. The proposed rule changes narrow the scope of ITEP, eliminating the miscellaneous capital additions process and the eligibility of maintenance, repairs, and environmentally required upgrades from eligibility. Additionally, firms must file advance notices with the state if they seek approval to participate in ITEP. Furthermore, contract renewals for firms participating in the program will only have terms of three years at an exemption percentage of 80%, a reduction from the previous five-year terms at a 100% exemption percentage, though there is an exception for firms who filed advances or had miscellaneous capital additions approved prior to June 24, 2016. As a result of the narrowed scope of ITEP, the economic benefits available to firms who wish to participate in the program are similarly reduced.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anne G. Villa
Undersecretary
1611#043

Gregory V. Albrecht
Chief Economist
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.603)

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 revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System: §603. Determining a Cohort for a Graduation*. These proposed changes update the manner in which student dropouts are

assigned regarding students who transfer to another school when a request for records is received by a sending school.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 6. Graduation Cohort, Index, and Rate

§603. Determining a Cohort for a Graduation

A. - H. ...

I. Beginning with the 2016-2017 academic year, for students who exit and have no subsequent enrollment in a school, the school of last record will be considered the school that sent a valid request for student records to the school that applied the exit code.

1. if the last exit from enrollment is for expulsion (exit code 01), then the request for records will not be used to determine last school of record. The last school of enrollment shall be used.

2. this policy shall apply to dropout assignment for any cohort graduation period or DCAI year that includes 2016-2017 and beyond. Years prior to 2016-2017 that are included in a cohort graduation period or DCAI year will continue to use the historical rule, established by the Student Information System (SIS), of assigning the dropout to the school of last enrollment record in SIS.

J. All students (excluding those defined in C), regardless of entry or exit dates, are included in the state-level cohort.

K. Students who exit K-12 education and enroll in adult education shall earn points for their school and LEA only if a GED is awarded by October 1 of the following academic year. Otherwise, the student shall be considered a dropout.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 33:424 (March 2007), LR 33:2031 (October 2007), LR 35:2312 (November 2009), LR 36:2242 (October 2010), LR 36:2840 (December 2010), LR 38:3108 (December 2012), LR 40:1316 (July 2014), LR 43:

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 one hundred 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., December 9, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, 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)

The proposed policy revisions will have no anticipated effect on costs or savings to state or local governmental units.

The current high school dropout assignment policy assigns the student dropout to the last school of record. The proposed revision, as recommended by district and school leadership,

will change the manner in which these dropouts are assigned. Beginning with the 2016-2017 school year, unless the dropout student is expelled, the dropout will be assigned to the receiving school, which is the school that sends a records request.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy change will have no anticipated 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)

There could be an impact on a school or district's performance scores. Cohort graduation rates are used in part to determine a school's performance score (SPS) and subsequently a district's performance score. This revision properly aligns a student's exit from a school to the responsible school. While this change may not significantly impact the SPS for a large school or school district, it could significantly impact an SPS for smaller schools and/or a small school district. This could have implications for a school's eligibility for funding, supports, recognitions, and interventions, as well as students' eligibility for school choice.

Furthermore, charter schools under long-term renewal (five or more years), whose academic performance declines for three consecutive years, will be subject to a formal evaluation and contract review by LDOE. Based on the results of its evaluation, the department may make recommendations for improving performance or revoke the charter.

Beth Scioneaux
Deputy Superintendent
1611#046

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 113—Louisiana's Reading and Language Competencies for New Teachers (LAC 28:XCV.Chapters 1-17)

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 the repeal of *Bulletin 113—Louisiana's Reading and Language Competencies for New Teachers*. This action is required because the teacher competencies outlined in Bulletin 113 are outdated and obsolete.

Title 28 EDUCATION

Part XCV. Bulletin 113—Louisiana's Reading and Language Competencies for New Teachers

Chapter 1. Introduction

§111. Reading and Language Competencies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A) (10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:3065 (December 2005), repealed LR 43:

Chapter 2. Foundational Concepts—Strand A

§201. BESE Reading Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1449 (July 2004), repealed LR 43:

§203. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1450 (July 2004), repealed LR 43:

§205. Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1450 (July 2004), repealed LR 43:

§207. Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1450 (July 2004), repealed LR 43:

§209. Additional Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1450 (July 2004), repealed LR 43:

§211. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

Chapter 3. Assessment—Strand B

§301. BESE/LDE Reading Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

§303. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

§305. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

§307. NCATE Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

§309. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

§311. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1541 (July 2004), repealed LR 43:

§313. Additional Reading and Language Competencies—Dispositions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

§315. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1451 (July 2004), repealed LR 43:

Chapter 5. Phonemic Awareness and Letter Knowledge—Strand C

§501. BESE/LDE Reading Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§503. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§505. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§507. NCATE Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§509. Additional Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§511. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

Chapter 7. Phonics and Word Recognition—Strand 7

§701. BESE/LDE Reading Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§703. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§705. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§707. NCATE Reading And Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1452 (July 2004), repealed LR 43:

§709. Additional Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§711. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

Chapter 9. Fluent, Automatic Reading of Text—Strand E

§901. BESE/LDE Reading Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§903. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§905. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A) (10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:3065 (December 2005), repealed LR 43:

§907. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A) (10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:3065 (December 2005), repealed LR 43:

§909. Additional Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§911. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

Chapter 11. Vocabulary

§1101. BESE/LDE Reading Competencies—Knowledge (Strand F)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§1103. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1105. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§1107. NCATE Reading And Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1453 (July 2004), repealed LR 43:

§1109. Additional Reading and Language Competencies—Knowledge (Strand F)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1111. Additional Reading and Language Competencies—Skills (Strand F)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

Chapter 13. Text Comprehension—Strand G

§1301. BESE/LDE Reading Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1303. BESE/LDE Reading Competencies—Skills (Strand G)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1305. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1307. NCATE Reading And Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1309. Additional Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1311. Additional Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

Chapter 15. Spelling and Writing

§1501. BESE/LDE Reading Competencies—Knowledge (Strand H)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

§1503. BESE/LDE Reading Competencies—Skills (Strand H)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

§1505. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1507. NCATE Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1509. Additional Reading and Language Competencies—Knowledge (Strand H)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

§1511. Additional Reading and Language Competencies—Skills (Strand H)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

Chapter 17. Professional Development—Strand I

§1701. BESE/LDE Reading Competencies—Knowledge

Repealed.

§1703. BESE/LDE Reading Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1705. NCATE Reading and Language Competencies—Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1707. NCATE Reading and Language Competencies—Skills

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1454 (July 2004), repealed LR 43:

§1709. Additional Reading and Language Competencies—Knowledge (Strand I)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

§1711. Additional Reading and Language Competencies—Skills (Strand I)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

§1713. Additional Reading and Language Competencies—Dispositions (Strand I)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1456 (July 2004), repealed LR 43:

§1715. Additional Reading and Language Competencies—Skills (Strand I)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1455 (July 2004), repealed LR 43:

§1717. Appendix—Development of Reading and Language Rubrics

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1456 (July 2004), repealed LR 43:

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 one hundred 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., December 9, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, 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 113—Louisiana's Reading and Language Competencies for New Teachers

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed policy revision will have no effect on costs or savings to state or local governmental units.
This action is required because these competencies are outdated and obsolete. Proposed rule changes to Bulletin 746 contain new teacher preparation competencies.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This policy 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
1611#047

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools (LAC 28:CXXXIX.107, 301, 307, 309, 401-411, 417-423, 521, 523, 707, 2301, 2303, 2701, 2703, 2707, 2709, and 2713)

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 revisions to *Bulletin 126—Charter Schools*: §107. Types of Charter Schools; §301. Charter School Authorizers; §307. Local School Board Duties; §309. Charter Authorizer Reporting Requirements; §401. Local Charter Authorizers; §403. Certification of Local Charter Authorizers; §405. Open Meetings Laws; §407. Independent Financial Audit; §409. Local Charter Authorizers; Initial Certification Period and Initial Review; §411. Renewal of Certification for Local Charter Authorizers; §417. Oversight of Charter Schools Authorized by Local Charter Authorizers; §419. Authorizer Fee; §421. Annual Report; §423. Closure of Local Charter Authorizers; §521. Authorization of Schools by Local Charter Authorizers; §523. Charter School Replication; §707. Contracts between Local Charter Authorizers and Charter Operators; §2301. State Funding; §2303. Federal Funding; §2701. Students Eligible to Attend; §2703. Enrollment Capacity; §2707. Application Period; §2709. Enrollment of Students, Lottery, and Waitlist; and §2713. At-Risk Students. Act 497 of the 2016 Regular Legislative Session eliminated Local Charter Authorizers from the definition of “chartering authority” and removed the authority of Local Charter Authorizers to enter into charter agreements, thus providing that only local school boards and BESE have this authority. The passage of Act 497 necessitates the removal of all references to Local Charter Authorizers and Type 1B Charter Schools in *Bulletin 126—Charter Schools*. Further, the revisions address issues resulting from federally declared disasters in Louisiana or surrounding states.

Title 28 EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§107. Types of Charter Schools

A. A type 1 charter school is a new school operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and a local school board.

B. A type 2 charter school is a new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the state Board of Elementary and Secondary Education.

C. A type 3 charter school is a preexisting public school converted and operated as the result of and pursuant to a charter between a nonprofit corporation and the local school board.

D. A type 3B charter school is a former type 5 charter school transferred from the Recovery School District to the administration and management of the transferring local

school system pursuant to R.S. 17:10.5, R.S. 17:10.7 and Bulletin 129, §505.

E. A type 4 charter school is a preexisting public school converted and operated or a new school operated as the result of and pursuant to a charter between a local school board and the state Board of Elementary and Secondary Education.

F. A type 5 charter school is a preexisting public school transferred to the recovery school district as a school determined to be failing pursuant to R.S. 17:10.5 or R.S. 17:10.7 and operated as the result of and pursuant to a charter between a nonprofit corporation and the state Board of Elementary and Secondary Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1358 (July 2008), amended LR 39:3249 (December 2013), LR 42:

Chapter 3. Charter School Authorizers

§301. Charter School Authorizers

A. The state Board of Elementary and Secondary Education authorizes the operation of type 2, type 4, and type 5 charter schools.

B. Local school boards authorize the operation of type 1, type 3, and type 3B charter schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3982.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 39:473 (March 2013), LR 39:3249 (December 2013), LR 42:

§307. Local School Board Duties

A. Local school boards have the following duties relating to charter schools:

1. to report any charter entered into to; and to report the number of schools chartered, the status of those schools, and any recommendations relating to the charter school program to BESE no later than July 1 of each year;

2. provide each charter school with the criteria and procedures that will be used when considering whether to renew a school's charter;

3. to notify the chartering group in writing of any decisions made relative to the renewal or nonrenewal of a school's charter not later than January 31 of the year in which the charter would expire. A notification that a charter will not be renewed shall include written explanation of the reasons for such non-renewal;

4. to make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase at up to fair market value. In the case of a type 2 charter school created as a result of a conversion, the facility and all property within the existing school shall also be made available to the chartering group. In return for the use of the facility and its contents, the chartering group shall pay a proportionate share of the local school board's bonded indebtedness to be calculated in the same manner as set for in R.S. 17:1990(C)(2)(a)(i). If such facilities were constructed at no cost to the local school board, then such facilities, including all equipment, books, instructional materials, and furniture within such facilities, shall be provided to the charter school at no cost.

5. if requested by a charter school, provide transportation services to a charter school student pursuant to R.S. 17:158.

a. The charter school shall reimburse the local school board for the actual cost of providing such transportation unless an amount less than the actual cost is agreed upon by both parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3982, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:868 (March 2011), LR 38:3117 (December 2012), LR 39:3064 (November 2013), LR 42:

§309. Charter Authorizer Reporting Requirements

A. All charter authorizers including BESE and local school boards shall notify state legislators regarding initial charter school proposals and applications according to the following requirements.

1. At the time a chartering group submits its initial proposal or application to operate a charter school, the chartering authority shall notify each state senator and state representative in whose district the charter school is to be located that such proposal or application has been submitted.

2. Such notification shall be limited to the date the proposal or application was submitted, the charter authorizer to which the proposal or application was submitted, the type of charter school the chartering group seeks to operate, and the location of the proposed school.

3. The charter authorizer shall also notify each state senator and state representative in whose district the charter school is to be located whether the proposal or application to operate a charter school was approved or denied.

4. The notifications shall be sent by both postal mail and electronic mail to each legislator's district office.

5. This Section shall not apply to renewals of the charter of an existing charter school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3982, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 40:2517 (December 2014), amended LR 42:

Chapter 4. Local Charter Authorizers

§401. Local Charter Authorizers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:473 (March 2013), repealed LR 42:

§403. Certification of Local Charter Authorizers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:473 (March 2013), repealed LR 42:

§405. Open Meetings Laws

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3982.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:474 (March 2013), repealed LR 42:

§407. Independent Financial Audit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:474 (March 2013), repealed LR 42:

§409. Local Charter Authorizers; Initial Certification Period and Initial Review

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981.1 and R.S. 17:3981.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:474 (March 2013), repealed LR 42:

§411. Renewal of Certification for Local Charter Authorizers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 17:3981, R.S. 17:3981.1, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:474 (March 2013), repealed LR 42:

§417. Oversight of Charter Schools Authorized by Local Charter Authorizers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973, R.S. 17:3974, R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3981.2, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:474 (March 2013), repealed LR 42:

§419. Authorizer Fee

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:474 (March 2013), repealed LR 42:

§421. Annual Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1 and R.S. 17:3998.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:475 (March 2013), repealed LR 42:

§423. Closure of Local Charter Authorizers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:475 (March 2013), repealed LR 42:

Chapter 5. Charter School Application and Approval Process

§521. Authorization of Schools by Local Charter Authorizers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973, R.S. 17:3974, R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3981.2, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:475 (March 2013), repealed LR 42:

§523. Charter School Replication

A. - A.4. ...

5. the type of charter schools the charter operator may open shall be determined as follows;

Charter School Meeting Eligibility Requirements	Permitted New Types of Charter Schools
Type 1	<ul style="list-style-type: none"> Type 1; May be a Type 3 subject to the permission of the school board
Type 2	<ul style="list-style-type: none"> New Type 2; May be a Type 2 conversion charter school upon receiving approval from the professional faculty, staff, and parents or guardians of the pre-existing school, as required in §507; May be a Type 5 subject to siting by the RSD to transform a current RSD direct-run or Type 5 charter school
Type 3	<ul style="list-style-type: none"> Type 1; May be a Type 3 subject to the permission of the school board
Type 3B	<ul style="list-style-type: none"> Type 3B, subject to the charter operator's ability to provide a facility or enter into an agreement with the local school board for use of a school board facility
Type 4	<ul style="list-style-type: none"> Type 4
Type 5	<ul style="list-style-type: none"> Type 2; May be a Type 2 conversion charter school upon receiving approval from the professional faculty, staff, and parents or guardians of the pre-existing school, as required in §507; May be a Type 5 subject to siting by the RSD to transform a current RSD direct-run or Type 5 charter school

6. the chartering group shall notify its chartering authority of its intent to open one or two additional charter schools pursuant to this section at least 120 calendar days prior to the day on which each additional school shall enroll students;

7. at least 90 calendar days prior to the day on which each additional school shall enroll students, the chartering authority shall enter into a charter agreement with the chartering group for each additional school and shall notify BESE of its action;

8. the charter operator must complete all processes and required by law and BESE policy to open a school, including, but not limited to the procurement of all required permits, inspections and approvals necessary to safeguard student safety and welfare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992(A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 39:1432 (June 2013), amended LR 39:3250 (December 2013), amended LR 42:

Chapter 7. Charter School Performance Contract §707. Contracts between Local Charter Authorizers and Charter Operators

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973, R.S. 17:3974, R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3982, and R.S. 17: 3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:476 (March 2013), repealed LR 42:

Chapter 23. Charter School Funding §2301. State Funding

A. Unless otherwise provided by law, the per pupil amount provided to a type 1, 2, 3, 3B, or 4 charter school shall be computed at least annually and shall be equal to the per pupil amount provided through the Minimum

Foundation Program formula, determined by the allocation weights in the formula based upon student characteristics or needs, received by the school district in which the student resides, as determined by the weighted differentiated funding formula based upon individual student characteristics or needs that is provided through the Minimum Foundation Program, except as provided in Subsection E of this Section.

1. The state-funded per pupil allocation shall be based upon the weighted student membership count received by the district pursuant to the most recent legislatively approved Minimum Foundation Program formula, and include all levels and allocation weights based upon student characteristics or needs as provided in the formula except any supplementary allocations for specific purposes. Supplementary allocations for specific purposes shall be provided to charter schools based solely on the funds generated by the charter school within each specific allocation.

B. Initial allocation of the per pupil amount each year shall be based on estimates provided by the Louisiana Department of Education using the most recent local revenue data and projected pupil counts available. Allocations may be adjusted during the year to reflect actual pupil counts.

C. For the purposes of funding, each type 1, type 3, and type 4 charter school shall be considered an approved public school of the local school board entering into the charter agreement.

D. Type 5 charter schools shall receive a per pupil amount each year pursuant to formulas developed by the RSD which may include differentiated funding for certain students, including students identified as being eligible for special education services, and based on the October 1 membership count of the charter school and any other membership count authorized pursuant to the Minimum Foundation Program formula adopted each year.

E. Beginning on July 1, 2016, for allocations in a school district with one or more Type 3B charter schools in a parish that contains a municipality with a population of 300,000 or more persons according to the latest federal decennial census, refer to *Bulletin 129—Recovery School District*, §1111.

F. Type 2 charter schools approved prior to July 1, 2008 shall receive a per pupil amount from the Louisiana Department of Education each year based on the October 1 membership count of the charter school and using state funds specifically provided for this purpose. In order to provide for adjustments in allocations made to type 2 charter schools as a result of changes in enrollment, BESE may provide annually for a February pupil membership count to reflect any changes in pupil enrollment that may occur after October 1 of each year. Type 2 charter schools authorized by the state Board of Elementary and Secondary Education after July 1, 2008, shall receive a per pupil amount each year as provided in the Minimum Foundation Program approved formula.

1. Any allocation adjustment made pursuant to this Paragraph shall not be retroactive and shall be applicable for the period from March 1 through the end of the school year. The provisions of this Paragraph relative to an allocation adjustment shall not be applicable to any type 2 charter school that has had an increase or decrease in student

enrollment of 5 percent or less in any school year for which the February membership count occurs.

G. A charter authority may annually charge each charter school it authorizes a fee in an amount equal to two percent of the per pupil allocation that is received by a charter school for administrative overhead costs incurred by the chartering authority for considering the charter application and any amendment thereto, providing monitoring and oversight of the school, collecting and analyzing data of the school, and for reporting on school performance. Such fee amount shall be withheld from the per pupil amount in monthly increments and shall not be applicable to any federal money or grants received by the school. Administrative overhead costs shall not include any cost incurred by the charter authority to provide purchased services to the charter school.

1. At least 30 days prior to the beginning of each fiscal year, each charter school shall be provided by its chartering authority with a projected budget detailing anticipated administrative overhead costs and planned uses for fees charged for such costs.

2. By no later than 90 days following the end of each fiscal year, each charter school shall be provided by its chartering authority or the Recovery School District, if applicable, an itemized accounting of the actual cost of each purchased service provided to the charter school.

3. The LDE may withhold and retain from state funds otherwise allocated to a local public school system through the Minimum Foundation Program an amount equal to 1 quarter of 1 percent of the fee amount charged to a type 3B charter school for administrative costs incurred by the LDE for providing financial oversight and monitoring of a type 3B charter school acting as its own LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3995, and R.S. 17:3981.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:874 (March 2011), LR 39:3250 (December 2013), LR 40:1324 (July 2014), LR 42:549 (April 2016), LR 42:

§2303. Federal Funding

A. Any type 2 or type 5 charter school shall be considered the local education agency for funding purposes and statutory definitions and, as a local education agency, shall receive allocations for all available funding.

B. A type 3B charter school shall have the option to remain its own local education agency or have the local school board serve as the charter school's local education agency, pursuant to §519 of this bulletin.

C. For each pupil enrolled in a charter school who is entitled to special education services, any state special education funding beyond that provided in the Minimum Foundation Program and any federal funds for special education for that pupil that would have been allocated for that pupil shall be allocated to the charter school which the pupil attends.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1372 (July 2008), amended LR 39:3251 (December 2013), LR 40:1324 (July 2014), LR 42:

Chapter 27. Charter School Recruitment and Enrollment

§2701. Students Eligible to Attend

A. - E. ...

F. Notwithstanding the residency eligibility and verification requirements above, upon approval of the state superintendent, a charter school may enroll a student without such documentation who has been displaced due to a federally declared disaster in Louisiana or surrounding states. As a condition of enrollment, the parent or legal custodian must provide a form signed by the parent or legal custodian of the student that must attest to the following:

1. student's name;
2. name of parent or legal custodian;
3. current address of parent or legal custodian;
4. statement indicating that the student is displaced from another school due to a federally declared disaster; and
5. name of the school in which the student was previously enrolled prior to the federally declared disaster.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:875 (March 2011), LR 37:2390 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 42:1018 (July 2016), LR 42:

§2703. Enrollment Capacity

A. - B. ...

C. In the event of a federally declared disaster in Louisiana or surrounding states, the state superintendent may approve a charter school to exceed 120 percent of the total number of students that it is authorized to enroll pursuant to its approved charter solely for the purpose of enrolling students who have been displaced from their homes or are unable to attend the school in which they were previously enrolled or zoned to attend. The state superintendent shall provide a report to the state board at its next regularly scheduled meeting outlining each charter school granted an increase in its enrollment capacity pursuant to this paragraph. Students enrolled pursuant to this paragraph shall be permitted to remain enrolled in the charter school for the remainder of the school year. Parents or legal custodians found to have misrepresented their displacement status shall be required to return to the school in which the student was previously enrolled or zoned to attend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 42:

§2707. Application Period

A. - D. ...

E. In the event of a federally declared disaster, a charter school may accept applications for students displaced due to the disaster outside of the designated student application period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 42:

§2709. Enrollment of Students, Lottery, and Waitlist

A. Each student submitting a timely application and meeting all residency requirements and admission requirements, as applicable, shall be considered eligible to enroll in a charter school. Additionally, students displaced as a result of a federally declared disaster who submit an application and the form specified in §2701.F of this Bulletin shall be considered eligible to enroll in a charter school.

B. - D.2.a. ...

b. If a charter school's enrollment capacity is increased for the purpose of enrolling students displaced due to a federally declared disaster and the charter school's designated application period has passed, the charter school may enroll students displaced due to a federally declared disaster on a first come, first served basis until the enrollment capacity is reached.

E. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:753 (March 2012), repromulgated LR 38:1395 (June 2012), amended LR 38:3120 (December 2012), LR 39:1021 (April 2013), LR 39:1437 (June 2013), LR 39:3252 (December 2013), LR 41:1265 (July 2015), LR 42:

§2713. At-Risk Students

A. Charter schools shall maintain required student enrollment percentages as provided in this Section, based on the demographic information collected in the February 1 pupil membership count for students who were enrolled at the school the previous October 1 according to the October 1 pupil membership count.

B. The following definitions shall apply in this Section.

Students from Local Public School Districts—public school students who reside within the geographic boundaries of the local city or parish school board's district where a particular charter school is located.

Students with Exceptionalities—students identified as having one or more exceptionalities, as defined in R.S. 17:1942, not including gifted and talented.

C. Unless otherwise explicitly stated in the charter school's contract, or otherwise provided by charter law, each type 2 charter school created as the result of a conversion, type 3 charter school, and type 4 charter school shall maintain the following student enrollment percentages:

1. the charter school's percentage of free- or reduced-price lunch eligible students shall be greater than or equal to the percentage of free- or reduced-price lunch eligible students enrolled at the school in the school year prior to the establishment of the charter school; and

2. the charter school's percentage of students with exceptionalities shall be greater than or equal to the percentage of students with exceptionalities enrolled at the school in the school year prior to the establishment of the charter school.

D. Except as otherwise provided by charter law, each type 1 or type 2 charter school created as a new school shall maintain the following student enrollment percentages:

1. the charter school's percentage of free- or reduced-price lunch eligible students shall be greater than or equal to 85 percent of the percentage of free- or reduced-price lunch eligible students from local public school districts. The remaining number of students enrolled in the charter school which would be required to have the same percentage of free- or reduced-price lunch eligible students from local public school districts shall be comprised of students who are otherwise at-risk as defined in §103 of this bulletin; and

2. the charter school's percentage of students with exceptionalities shall be greater than or equal to 85 percent of the percentage of students with exceptionalities from the local public school districts. The remaining number of students enrolled in the charter school which would be required to have the same percentage of students with exceptionalities from the local public school districts shall be comprised of students who are otherwise at-risk as defined in §103 of this bulletin.

E. For the purpose of Subsection D of this Section, the LDE shall determine the percentages of free or reduced-price lunch eligible students and students with exceptionalities from local public school districts as follows.

1. For charter schools in operation prior to July 1, 2016, the student enrollment percentages shall be based on the February 1, 2015 pupil membership count and shall remain fixed until the charter school's contract is renewed, unless otherwise provided for in existing charter contracts.

2. For charter schools beginning an initial or renewal charter contract term on or after July 1, 2016, the student enrollment percentages shall be based on the pupil membership counts from the school year immediately preceding the beginning of the charter contract term and shall remain fixed during the charter contract term, unless the charter contract specifies that the percentages shall be required to reflect the current year's percentages.

F. The LDE shall perform all calculations necessary to implement this Section.

G. Annually, the LDE shall make a report to BESE on the student enrollment percentages detailed in this Section for all public schools and local education agencies.

H. Each charter authorizer shall hold its authorized charter schools accountable for meeting the required student enrollment percentages in this Section in accordance with state law by taking the following actions for each charter school that fails to meet required enrollment percentages:

1. conducting an inquiry to determine all actions taken by the charter school to attempt to meet the requirements and the reasons for such failure; and

2. providing a written notice to the charter school that provides specific annual enrollment percentage targets the charter school must meet to demonstrate progress toward meeting the required enrollment percentages, and details how the charter authorizer will hold the charter school accountable, including any potential consequences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) R.S. 17:3973, R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011). LR 40:1325 (July 2014), LR 42:550 (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 one hundred 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., December 9, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, 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**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions on the elimination of Local Charter Authorizers will have no effect on costs or savings to state or local governmental units, as none have ever been approved.

Act 497 of the 2016 Regular Legislative Session eliminated Local Charter Authorizers from the definition of "chartering authority" and removed the authority of Local Charter Authorizers to enter into charter agreements, thus providing that only local school boards and BESE have this authority. The passage of Act 497 necessitates the removal of all references to Local Charter Authorizers and Type 1B Charter Schools in Bulletin 126, *Charter Schools*.

Further, the revisions address issues resulting from federally declared disasters in Louisiana or surrounding states, by allowing a charter school to exceed 120 percent of the total number of students it is authorized to enroll for students who have been displaced and are unable to attend the school in which they were previously enrolled or zoned to attend.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There could be a reduction in state and local revenues as calculated in the Minimum Foundation Program (MFP) funding formula for a traditional public school as a result of students transferring to a charter public school due to their displacement or inability to attend the school in which they were previously enrolled or zoned to attend. These students shall be permitted to remain enrolled in the charter school for the remainder of the school year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Charter schools will be allowed to enroll students in excess of their approved caps, which will result in an increase in enrollment and associated funding.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Secretary
1611#048

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1922—Compliance Monitoring Procedures
(LAC 28:XCI.101, 105, 107, 109,
301, 303, 305, 307, 311, and 313)

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 revisions to *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 a 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 LDE 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. At the discretion of the parent, interviews may be conducted at the school site or via teleconference.

C. During the on-site monitoring of the LEA, the monitoring team will schedule an evening town hall meeting to provide a forum for parents to engage with team members and other parents. Facilitators will be available to answer questions if parents should want to discuss a matter privately outside the group setting.

D. LDE team members will visit sites, make observations, review records, and interview personnel.

E. The team leader will meet with the LEA special education director to review administrative issues. Additional data/information may be requested if further analysis is required for determining compliance status for specific regulatory issues.

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 one hundred 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., December 9, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, 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 will have no effect on costs or savings to state or local governmental units.

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.

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
1611#049

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Tuition Trust Authority
Office of Student Financial Assistance**

**Achieving a Better Life Experience (ABLE) Program
(LAC 28:VI.Chapter 5)**

The Louisiana Tuition Trust Authority announces its intention to amend its administrative rules (LSA-R.S. 17:3091 et seq.).

This rulemaking will add Chapter 5 to LATTA's administrative rules to implement the Louisiana ABLE Act, established in Louisiana through Act 93 of 2014, to provide for a savings program for persons with disabilities as established in Internal Revenue Code (IRC) section 529A. (ST17174NI)

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance — Higher
Education Savings**

Subchapter A. Tuition Trust Authority

**Chapter 5. Achieving a Better Life Experience
(ABLE)**

§501. General Provisions

A. The Louisiana Achieving a Better Life Experience (ABLE) Account Program was enacted in 2014 to provide a program of savings to encourage and assist individuals and families in saving private funds for the purpose of supporting persons with disabilities in endeavors to maintain health, independence, and quality of life. The purposes of the Program include all of the following:

1. To pay qualified disability expenses so that persons with disabilities may maintain health, independence, and quality of life.

2. To provide secure funding for disability-related expenses on behalf of designated beneficiaries that will supplement, but not supplant, benefits provided through private insurance, the medical assistance program administered by this state in accordance with Title XIX of the Social Security Act, the supplemental security income program under Title XVI of such Act, the beneficiary's employment, and other sources.

3. To comply fully with all provisions of the Stephen Beck, Jr., ABLE Act of 2014 (Public Law 113-295, Division B), and all regulations issued pursuant thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081 - 3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§503. Legislative Authority

A. The Louisiana ABLE Act is established by Act 604 of the 2016 Regular Session of the Louisiana Legislature. 22-A, Title 17 of the Louisiana Revised Statutes (R.S. 17:3081-3089).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081 - 3089.

HISTORICAL NOTE:

§505. Program Administration

A. The Louisiana Tuition Trust Authority (LATTA) is a statutory authority whose membership consists of the Louisiana Board of Regents, plus one member from the Louisiana Bankers Association, the state treasurer, and one member each from the House of Representatives and Senate.

B. The LATTA administers the ABLE Account Program through the Louisiana Board of Regents, Office of Student Financial Assistance (LOSFA).

C. LOSFA, a program under the Board of Regents, performs the functions of the state relating to programs of financial assistance and certain scholarship programs for higher education in accordance with directives of its governing bodies and applicable law, and as such is responsible for administering the ABLE account program under the direction of the LATTA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081 - 3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§507. Applicable Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Account Owner—the eligible individual who opened the account and who is also the beneficiary.

Administrator—the individual who has the authority to direct the activities of the account. The administrator of the account may be the account owner or a person authorized by law or by authentic act to administer the account on behalf of the beneficiary. For purposes of these rules, the term Administrator shall mean the account owner or a person who is legally authorized to act on his behalf.

Beneficiary—the eligible individual who established ABLE account, or for whom an ABLE account was established, and who is the owner of such account.

Current Value—the value of an ABLE account at a given point in time.

a. The current value of fixed earnings investment options includes the accumulated value of the principal deposited and earnings on deposits.

b. The current value of variable earnings investment options includes the number of units in the investment option purchased multiplied by the current value of each unit. This value may be more or less than the amount originally deposited.

Deposits—the actual amount of money received for deposit for investment in an ABLE account. Deposits do not include earnings on deposits.

Eligible Individual—An individual is an eligible individual for a given tax year if one of the following is met:

a. the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or

b. a disability certification with respect to such individual is filed with the Secretary for such taxable year.

False or Misleading Information—a statement or response made by a person which is knowingly false or misleading, and made for the purpose of establishing a program account and/or receiving benefits to which the person would not otherwise be entitled.

Fixed Earnings—the placement of all deposits in an ABLE Account, including the interest earned thereon, in investments that normally provide a fixed rate of return for a specific period of time.

Louisiana Board of Regents—the agency of state government responsible for administering the ABLE account program under the direction of the Louisiana Tuition Trust Authority.

Office of Student Financial Assistance (LOSFA)—a program under the Board of Regents, performs the functions of the state relating to programs of financial assistance and certain scholarship programs for higher education in accordance with directives of its governing bodies and applicable law, and as such is responsible for administering the ABLE account program as directed by LATTA and the Louisiana Board of Regents.

Louisiana Resident—

a. any person who resided in the state of Louisiana on the date of the application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

i. if registered to vote, is registered to vote in Louisiana;

ii. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;

iii. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle;

iv. if earning an income, has complied with state income tax laws and regulations;

b. a member of the Armed Forces stationed outside of Louisiana who claims Louisiana on his/her official DD Form 2058 as his/her legal residence for tax purposes, and is in compliance with state income tax laws and regulations, shall be considered eligible for program participation;

c. a member of the Armed Forces stationed in Louisiana under permanent change of station orders shall be considered eligible for program participation;

d. persons less than 21 years of age are considered Louisiana residents if they reside with and are dependent upon one or more persons who meet the above requirements.

Louisiana Tuition Trust Authority (LATTA)—the statutory body responsible for the administration of the ABLE Account Program.

Maximum Allowable Account Balance—\$500,000.

Member of Family—an individual who is the brother, sister, stepbrother, stepsister, half-brother, or half-sister to the beneficiary, including an adopted brother, sister, stepbrother, stepsister, half-brother, or half-sister.

Natural Person—a human being.

Other Person, with respect to any designated *beneficiary*—any person, other than the beneficiary, whether natural or juridical, who is not a member of the family, including but not limited to individuals, groups, trusts, estates, associations, organizations, partnerships, corporations, and custodians under the Uniform Transfer to Minors Act (UTMA).

Owner's Agreement—the agreement for program participation that the account owner or administrator completes and signs. It incorporates, by reference, R.S. 17:3081 et seq., and the rules promulgated by the LATTA to implement this statutory provision and any other state or federal laws applicable to the agreement and the terms and conditions as set forth therein.

Person—a human being or a juridical entity.

Qualified Disability Expenses (QDEs)—expenses that relate to the blindness or disability of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life. QDEs may, but need not, benefit only the disabled individual. QDEs include, but are not limited to, expenses related to the beneficiary's:

- a. education;
- b. housing;
- c. transportation;
- d. employment training and support;
- e. assistive technology and related services;
- f. personal support services;
- g. health, prevention, and wellness;
- h. financial management and administrative services;
- i. legal fees;
- j. expenses for oversight and monitoring;
- k. funeral and burial expenses; and
- l. other expenses which may be identified by the Internal Revenue Service.

Redemption Value—the cash value of the money in an ABLE Account invested in a fixed earnings option that are attributable to the sum of the principal deposited and the earnings on principal authorized to be credited to the account by the LATTA, less any disbursements and refunds. Redemption value is not applicable to an ESA invested in variable earnings.

Refund Recipient—the person designated in the ABLE account program owner's agreement or by operation of law to receive refunds from the account. The refund recipient can only be the account owner, his heirs, or his estate.

Trade Date—the date that a deposit to an investment option that includes variable earnings is assigned a value in units, the date a disbursement or refund from an investment option that includes variable earnings is assigned a value, or the date of a change in investment options that includes variable earnings is assigned a value, whichever is applicable.

Variable Earnings—refers to that portion of funds in an ABLE account invested in equities, bonds, short-term fixed income investments or a combination of any of the three.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§509. Establishment of an ABLE Account

A. An ABLE account is established by or on behalf of an eligible individual to provide the funding necessary for qualified disability expenses (QDEs).

B. Only one ABLE account may be established for an eligible individual, whether the account is established in Louisiana or with another ABLE program.

C. The eligible individual must be a Louisiana resident as defined in §507 and must meet the following citizenship requirements:

1. be a United States citizen; or
2. be a permanent resident of the United States as defined by the U.S. Citizenship and Immigration Services (USCIS) or its successor and provide copies of USCIS documentation with the submission of the owner's agreement; or
3. be lawfully residing in the United States and have a valid Social Security number.

D. An ABLE account may be established by the account owner or an administrator who is authorized by law or by authentic act to administer the account on behalf of the account owner.

1. An administrator who is not the account owner may establish an account on behalf of an eligible individual upon provision of documentation to LOSFA evidencing that person has the legal right to act on behalf of the eligible individual.

2. Documentation required to establish an account on behalf of an eligible individual includes:

- a. if a parent, a copy of the eligible individual's birth certificate;
- b. if an adoptive parent, documentation evidencing the adoption of the eligible individual;
- c. if a custodian, court documents evidencing the appointment of the custodian by a court of law;
- d. if designated by the eligible individual to administer his affairs, documentation evidencing such designation.

E. Program Enrollment Period. An account may be established at any time during the calendar year.

F. Completing the Owner's Agreement

1. This agreement must be completed and signed by the administrator.
2. The administrator who is also the account owner may designate a limited power of attorney to an administrator who would be authorized to act on his behalf in the event the account owner becomes incapacitated.
3. The administrator must certify:
 - a. that the person for whom the account is being established is an eligible individual as defined in §507;
 - b. that the eligible individual is a Louisiana resident;
 - c. that the eligible individual meets the citizenship requirements set forth in §509.B;

d. that if he is not the eligible individual, that he is authorized by law or by authentic act to open and administer the ABLE account on behalf of the eligible individual;

e. that he will provide the documentation necessary to establish the certifications made for Subsections D.2.a-d upon request by LOSFA or the Internal Revenue Service; and

f. that he has read and understands the owner's agreement and participation materials.

4. The administrator agrees to the following terms when completing the account owner's agreement.

a. All transactions involving the ABLE account will be reported to the Social Security Administration on a monthly basis.

b. Fees

i. Except for penalties which may be imposed on refunds, the LATTA shall not charge fees for the opening or the maintenance of a fixed earnings account.

ii. Fees imposed by investment institutions for opening or maintenance of variable earnings accounts may be charged to the account owner.

c. Financial and investment institutions may be authorized by the LATTA to offer prospective owners information and assistance in opening a START Program account.

d. Only the account owner, his heirs, or his estate may be designated to receive refunds from the ABLE account. In the event of the death of the account owner when the account owner is designated to receive the refund, the refund shall be made to the account owner's estate.

G. Acceptance of the Owner's Agreement

1. A properly completed and submitted owner's agreement will be reviewed within 48 hours of receipt for completeness. If additional information is required to accept the owner's agreement, the Administrator will be contacted to provide that information.

2. Upon acceptance of the owner's agreement, the LATTA will establish the ABLE account.

H. Providing Personal Information

1. The administrator is required to disclose personal information regarding the eligible individual, including:

- a. his Social Security number;
- b. his date of birth; and
- c. his relationship to the administrator.

2. If not the eligible individual, the administrator will be required to disclose the following information:

- a. his relationship to the eligible individual;
- b. if a parent of the eligible individual, his Social Security number;

3. The eligible individual's Social Security number and federal and state employer identification numbers will be used for purposes of federal and state income tax reporting to access individual account information for administrative purposes, and to provide necessary reports to the Social Security Administration.

4. The following protected health information is collected only for IRS reporting purposes.

- a. Basis for the Eligible Individual's Eligibility
 - i. Code A—Social Security disability Income—Title II SSA.
 - ii. Code B—Social Security income—Title XVI SSA.

iii. Code C—eligible individual is the subject of a disability certification filed with the IRS for 2016.

b. Type of Disability

i. Code 1—developmental disorders, including autistic spectrum disorder, Asperger’s disorder, development delays, learning disabilities.

ii. Code 2—intellectual disability. May be reported as mild, moderate or severe intellectual disability.

iii. Code 3—psychiatric disorders, including schizophrenia, major depressive disorder, post-traumatic stress disorder (PTSD), anorexia nervosa; attention deficit/hyperactivity disorder (AD/HD), bipolar disorder.

iv. Code 4—nervous disorders, including blindness, deafness, cerebral palsy, muscular dystrophy, spina bifida, juvenile-onset Huntington’s disease, multiple sclerosis, severe sensorineural hearing loss, congenital cataracts.

v. Code 5—congenital anomalies: chromosomal abnormalities, including down syndrome, osteogenesis imperfecta, xeroderma pigmentosum, Spinal muscular atrophy, Fragile X syndrome, Edwards syndrome.

vi. Code 6—respiratory disorders: cystic fibrosis.

vii. Code 7—other: includes tetralogy of fallot, hypoplastic left heart syndrome, end-stage liver disease, juvenile-onset rheumatoid arthritis, sickle cell disease, hemophilia; and any other disability not listed under codes 1-6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§511. Deposits to ABLÉ Accounts

A. Application Fee and Initial Deposit Amount

1. No application fee will be charged to those applying for an ABLÉ account on behalf of an eligible individual.

2. Financial and investment institutions may be authorized by the LATTA to offer assistance in establishing a START Program account. (See fees in §509.F.4)

3. An initial deposit is not required to open an ABLÉ account; however, a deposit of at least \$10 must be made within 180 days from the date on the letter of notification of approval of the account.

4. A lump sum deposit may not exceed the maximum allowable account balance (\$500,000).

B. Deposit Options

1. The administrator shall select one of the following deposit options during the completion of the owner's agreement; however, the administrator may change the monthly deposit amount at any time and the payment method by notifying the LATTA:

a. occasional lump sum payment(s) made directly to the LATTA or to a LATTA approved investment institution;

b. monthly payments made directly to the LATTA or to a LATTA-approved financial or investment institution;

c. automatic account debit, direct monthly transfer from the Administrator’s checking or savings account to the LATTA or a LATTA approved investment institution;

d. payroll deduction, if available through the Administrator’s employer.

C. Limitations on Deposits

1. All deposits must be rendered in amounts of at least \$10 and must be made in cash, check, money order, automatic account debit or payroll deduction, defined as any of the deposit options listed in §511.B.1.

2. Once the cumulative contributions and earnings on contributions have reached or exceeded the maximum allowable account balance, principal deposits will no longer be accepted to the account until a distribution is made which reduces the account balance below the maximum allowable account balance.

3. ABLÉ Account balances of up to \$100,000 will not affect Social Security Income (SSI) benefits. However, once an account exceeds \$100,000, SSI benefits will be suspended until such time as the balance is reduced below \$100,000.

D. Investment Options

1. The state treasurer shall select fixed earnings and variable earnings investment options.

2. The authority shall furnish each account owner with information that discloses each of the investment options offered by the program.

3. The administrator shall select the investment option for the ABLÉ Account at the time the account is opened. The administrator may select the same or a different investment option at the time of each deposit.

4. Changing the Investment Option

a. The administrator may change the investment options no more than two times in a calendar.

b. If an ABLÉ account has funds in two or more investment options.

i. Each option in the account may be changed to one different option or allowed to remain the same.

ii. All funds in each option changed must be transferred.

iii. Funds in one option may not be moved to more than one option.

iv. All changes in investment options must take place in one transaction.

v. Whether the funds are moved from one option or all options, the change is considered one of the two allowed investment option changes per calendar year.

c. Once a selection is made, all deposits shall be directed to the last investment option selected.

E. Effective Date of Deposits

1. Deposits for investment options that are limited to fixed earnings will be considered to have been deposited on the date of receipt.

2. Deposits for investment options that include variable earnings will be assigned a trade date based on the method of deposit and the date of receipt.

a. Deposits by check will be assigned a trade date three business days after the business day during which they were received.

b. Deposits made by electronic funds transfer through the automated clearing house (ACH) network, or its successor, will be assigned a trade date of three business days after the business day during which they were received.

c. Deposits made by all other means of electronic funds transfer, including deposits made by transferring funds from a variable earnings option in which they are currently

deposited to another option, will be assigned a trade date of one business day after the business day during which they were received.

3. Deposits for investment options that include variable earnings which are received via check or electronic funds transfer through the automated clearing house network will be deposited into the fixed earnings option until the trade date. Earnings accrued on these deposits prior to the trade date shall be deposited in the variable earnings transaction fund.

4. Deposits received on weekends and holidays will be considered received on the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§513. Disbursement of Account Funds for Payment of QDEs

A. Request for Disbursement

1. An ABLÉ account administrator may request a disbursement at any time, but no more than twice per month.

2. The request for disbursement must include:

- a. the ABLÉ account number;
- b. the eligible Individual's name, address, and Social Security number;
- c. the administrator's signature (may be electronic); and
- d. the amount to be disbursed.

3. Requests for disbursements must be in whole dollar increments, must be no less than \$200 and may be no more than the account balance.

4. In the event funds are invested in more than one investment option, the disbursement shall be made proportionally from each investment option in the account.

5. Disbursements will be made only to the administrator of the account.

6. Disbursements from investment options with variable earnings shall be assigned a trade date of one business day after the business day of receipt of the transfer request.

B. Rate of Expenditure

1. The amount to be disbursed from an account shall be drawn from deposits and interest in the same ratio as these funds bear to the total value of the account as of the date of the disbursement.

2. The administrator may not withdraw an amount in excess of the QDEs of the eligible individual or the value of the account, whichever is less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§515. Effect on Federal and State Assistance Programs

A. For the purpose of determining eligibility to receive, or the amount of, any assistance or benefit which may be received by the ABLÉ account owner by a means-tested federal assistance program, the following amounts shall be disregarded with respect to any period during which the beneficiary maintains his status as an eligible individual:

1. any amount, including earnings thereon, up to \$100,000;

2. any contributions to the ABLÉ account of the Eligible Individual;

3. any distributions from the account of the eligible individual, provided that such distributions are made for the purchase or payment of QDEs, subject to determination by the Social Security Administration that such distributions do not exceed allowable assets/income for a given period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§517. Termination, Refund, and Rollovers of an Education Savings Account

A. Account Termination

1. The administrator may terminate an ABLÉ account at any time.

2. In the event the person for whose benefit the account was opened is no longer an eligible individual as defined in §507, the administrator shall

a. terminate the account; or

b. transfer the account to another eligible individual who is also a member of the family of the original eligible Individual within 60 days of the determination that the original eligible individual is no longer qualified.

3. The LATTA may terminate an account as follows.

a. If LATTA determines that funds have been disbursed for expenses other than QDEs, LATTA may require the return of the funds to the ABLÉ Account. If funds are not returned to the account within 60 days of a request to do so, LATTA, in its sole discretion, may refund any balance remaining and close the account.

b. The LATTA may terminate an account if no deposit of at least \$10 has been made within 180 days from the date of notification of approval of the account.

c. The LATTA may terminate an account if the eligible individual for whom the account was opened no longer meets the criteria to be an Eligible Individual and a new eligible individual is not named within 60 days.

d. The LATTA may terminate an owner's agreement if it finds that the account owner or beneficiary provided false or misleading information (see §507).

i. If the LATTA terminates an owner's agreement under this Subsection, all interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

ii. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

B. Refunds

1. Requests for refund may result in the termination of the account and in the refund of:

a. the deposits invested in fixed earnings, if the account has been open for less than 12 months;

b. the redemption value, if the account has been open for 12 or more months;

c. the deposits to or the current value of an account invested in a variable earnings option, whichever is less, if the account has been open for less than 12 months;

d. the current value of an account invested in variable earnings, if the account has been open for 12 or more months.

2. Refunds from investment options with variable earnings shall be assigned a trade date of one business day after the business day of receipt of the request.

C. Designation of a Refund Recipient. The refund recipient can only be the account owner, his heirs, or his estate, and the administrator shall designate the refund recipient when completing the owner's agreement.

D. Voluntary Termination of an Account

1. Refunds shall be equal to the redemption value of the ESA at the time of the refund, and shall be made to the person designated in the owner's agreement or by rule.

2. The person receiving the refund shall be responsible for any state or federal income tax that may be payable due to the refund.

E. Effective Date of Account Termination. Account termination shall be effective at midnight on the business day on which the request for account termination and all supporting documents are received. Accounts will be credited with interest earned on principal deposits through the effective date of the closure of the account.

F. Refund Payments. Payment of refunds for voluntary termination under §515.D shall be made within 30 days of the date on which the account was terminated. The termination refund shall consist of the principal remaining in the account and interest remaining in the account accrued on the principal through the end of the calendar year preceding the year in which the request to terminate an account is made. Interest earned in excess of \$10 during the calendar year of termination will be refunded within 45 days of the date the state treasurer announces the interest rate for the preceding calendar year. Interest earned of \$10 or less during the calendar year of termination will be forfeited.

H. Rollovers

1. Rollovers to another ABLE account administered by LOSFA.

a. An administrator may rollover any part of an ABLE account to ABLE account if the beneficiary of the account receiving the funds is a member of the family of the beneficiary of the original account.

b. The current value of the account from which the rollover is made will be transferred to the new account.

2. Rollover to another ABLE program.

a. An administrator may request a rollover of the current value of the account to another qualified tuition program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§519. Substitution, Assignment, and Transfer

A. Substitute Beneficiary. The beneficiary of an ESA may be changed to a substitute beneficiary provided the account owner completes a beneficiary substitution form and the following requirements are met:

1. the substitute beneficiary is a member of the family as defined under §107;

2. the substitute beneficiary meets the citizen/resident alien requirements of §301.F, and, if the account owner is a nonresident of the state of Louisiana, the substitute beneficiary meets the applicable residency requirements (see §301.G).

B. Substitution/Transfer of Account Ownership. The administrator may transfer ownership of an ABLE account only with the written approval of the LATTA and only to a member of the family of the eligible individual for whom the account was opened.

C. Assignment of Account Ownership. Ownership of an ESA cannot be assigned.

D. Changes to the Owner's Agreement

1. The administrator may request changes to the owner's agreement.

2. Changes must be requested in writing and be signed by the administrator.

3. Changes, if accepted, will take effect as of the date the notice is received by the LATTA.

4. The LATTA shall not be liable for acting upon inaccurate or invalid data which was submitted by the administrator.

5. The administrator will be notified by the LATTA of any changes affecting the owner's agreement which result from changes in applicable federal and state statutes and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

§521. Miscellaneous Provisions

A. Account Statements and Reports

1. The LATTA will forward to each administrator an annual statement of account which itemizes the:

a. date and amount of deposits and interest earned during the prior year; and

b. total principal and interest accrued to the statement date.

2. The administrator must report errors on the annual statement of account to the LATTA within 60 days from the date on the account statement or the statement will be deemed correct.

B. Earned Interest

1. Interest earned on principal deposits during a calendar year will be credited to accounts and reported to administrators after the conclusion of the calendar year in which the interest was earned.

2. The rate of interest earned shall be the rate of return earned on the fund as reported by the state treasurer and approved by the LATTA.

C. Refunded Amounts

1. Interest earned on an ABLE account which is refunded to the account owner or beneficiary will be taxable for state and federal income tax purposes.

2. No later than January 31 of the year following the year of the refund, the LATTA will furnish the state Department of Revenue, the Social Security Administration, the Internal Revenue Service, and the recipient of the refund an Internal Revenue Service Form 1099, or whatever form and/or manner of reporting is appropriate according to the applicable entity.

D. Rule Changes. The LATTA reserves the right to amend the rules regulating the Louisiana ABLE Account Program policies and procedures; however, any amendments to rules affecting participants will be published in accordance with the Administrative Procedure Act.

E. Determination of Facts. The LATTA shall have sole discretion in making a determination of fact regarding the application of these rules.

F. Individual Accounts. The LATTA will maintain an individual account for each beneficiary showing the redemption value of the account.

G. Confidentiality of Records. All records of the LATTA identifying Administrators and/or account owners of ABLE accounts, amounts deposited, expended or refunded, are confidential and are not public records.

H. No Investment Direction. No administrator may direct the investment of funds credited to an account, except to select investment options no more than twice per year. Deposits will be invested on behalf of the Louisiana ABLE Account Program by the state treasurer.

I. No Pledging of Interest as Security. No interest in an ABLE account may be pledged as security for a loan.

J. Excess Funds

1. Principal deposits will no longer be accepted once the account total reaches the maximum allowable account balance (see §507); however, the account will continue to earn interest.

2. Funds in excess of the maximum allowable account balance may remain in the account and continue to accrue interest and may be disbursed in accordance with §309, or will be refunded in accordance with §311 upon termination of the account.

K. Withdrawal of Funds. Funds may not be withdrawn from an ESA except as set forth in §513 and §515.

L. NSF Procedure

1. A check received for deposit to an ABLE account which is returned due to insufficient funds in the owner's account on which the check is drawn, will be redeposited and processed a second time by the Louisiana ABLE Account Program's financial institution.

2. If the check is returned due to insufficient funds a second time, the check will be returned to the depositor.

3. Earnings reported by the state treasurer on deposits made by check or an ACH transfer which is not honored by the financial institution on which it was drawn subsequent to the trade date shall be forfeited by the account owner.

M. Effect of a Change in Residency. On the date an account is opened, either the account owner must be a resident of the state of Louisiana; however, if the account owner temporarily or permanently moves to another state after the account is opened, he may continue participation in the program in accordance with the terms of the owner's agreement.

N. Abandoned Accounts. Abandoned accounts will be defined and treated in accordance with R.S. 9:151 et seq., as amended, the Louisiana Uniform Unclaimed Property Act.

O. Investment in Variable Earnings. When an account owner selects a variable earnings account, up to 100 percent of the deposits may be invested in equity securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Board of Regents, Tuition Trust Authority, Office of Student Financial Assistance, LR 42:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in LSA-R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in LSA-R.S. 49:973.

Business Impact Statement

The proposed Rule will have no adverse impact on small businesses as described in LSA-R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed Rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments on the proposed changes (ST17174NI) until 4:30 p.m., December 12, 2016, to Sujuan Williams Boutté, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

Robyn Rhea Lively
Senior Attorney

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Achieving a Better Life
Experience (ABLE) Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will result in a cost to state governmental units of approximately \$130,000 in FY 16 and approximately \$67,500 in subsequent fiscal years. Act 604 of the 2016 Regular Legislative Session placed Louisiana's Achieving a Better Life Experience (ABLE) Program under the authority of the Louisiana Tuition Trust Authority (LATTA) to implement the program. Due to the similarities between the START Savings Program and the ABLE Program, LOSFA was able to absorb the initial administrative costs and will expend \$130,000 in state general funds supplied by the Board of Regents on programming, software development, and other technology costs to modify and adapt the existing START Savings Program applications and processes to support the new ABLE Accounts. At a minimum, it is estimated that ongoing support costs (operating and technology maintenance expenses) of \$67,548 for state fiscal years 2016-2017 and beyond will be required for ABLE Program operating expenses and professional services. Additional funding for personal services for the 2016-2017 state fiscal year and beyond may be required for additional staff if the number of ABLE Accounts and/or ABLE disbursements grow to a point where the additional workload cannot be accomplished with existing personnel resources. At this time, the number of accounts opened and the workload associated with new accounts cannot be determined.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will directly benefit individuals with disabilities and their families who depend on a wide variety of public benefits for income, health care and food and housing assistance. Eligibility for these public benefits (SSI, SNAP, Medicaid) require meeting a means or resource test that limits an individual's access to cash savings, retirement funds and other items of significant value, thus requiring an individual to remain poor in order to retain eligibility for these

public benefits. The ABLE Act recognizes the extra and significant costs of living with a disability and allows eligible individuals and their families to establish ABLE savings accounts that will not affect their eligibility for SSI, Medicaid and other public benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures.

Robyn Rhea Lively
Senior Attorney
1611#011

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Division

Recordkeeping for Sources Exempt from Air Permitting (LAC 33:III.501)(AQ367)

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.501.B.2.e (AQ367).

R.S. 30:2054(B)(2)(b)(ix) and LAC 33:III.501.B.2.d establish an exemption from the requirement to obtain an air permit for certain very small sources of air emissions. This Rule will require owners or operators of such sources to determine and maintain records of potential criteria and toxic air pollutant emissions.

In accordance with LAC 33:III.501.B.2.d, the requirement to obtain an air permit does not apply to any source that is not a part 70 source, as defined in LAC 33:III.502, and for which facility-wide potential emissions are less than:

- 5 tons per year for each criteria pollutant as defined by the Clean Air Act;
- 15 tons per year of all such defined pollutants combined; and
- the minimum emission rate (MER) for each toxic air pollutant established by Tables 51.1 and 51.3 of LAC 33:III.Chapter 51.

At present, LAC 33:III.501.B.2.d does not expressly require the owner or operator of such a source to determine and maintain records of potential criteria and toxic air pollutant emissions to verify eligibility. However, R.S. 30:2054(B)(2)(b)(ix) provides that:

The secretary may adopt, promulgate, and enforce standards, limitations, and other regulations applicable to sources which are not required to obtain a permit.

The standards or regulations may include the requirement to determine, document, and maintain records to demonstrate the potential or actual emissions of the facility.

This Rule will require owners or operators of sources exempt from the requirement to obtain an air permit per LAC 33:III.501.B.2.d to determine and maintain records of potential criteria and toxic air pollutant emissions consistent with the authority provided by the statute. This Rule will also require such owners or operators to reassess and

document any change in potential emissions of the aforementioned pollutants prior to effecting a modification or otherwise increasing the production rate or hours of operation above the values previously used to determine potential emissions. The basis and rationale for this Rule are to require owners or operators of sources exempt from the requirement to obtain an air permit per LAC 33:III.501.B.2.d to determine and maintain records of potential criteria and toxic air pollutant emissions. 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 5. Permit Procedures

§501. Scope and Applicability

A. - B.2.d.iii. ...

e. Recordkeeping for Sources Exempt from Permitting Requirements

i. The owner or operator of a source which is not required to obtain a permit per LAC 33:III.501.B.2.d shall determine and maintain records of potential criteria and toxic air pollutant emissions from such source.

ii. The owner or operator shall reassess and document any change in potential criteria and toxic air pollutant emissions from the source prior to effecting a *modification* as defined in LAC 33:III.111 or otherwise increasing the production rate or hours of operation above the values previously used to determine potential emissions.

iii. For purposes of this exemption, potential emissions shall mean the emissions the source is capable of emitting considering all control measures in place, utilized, and properly maintained; historical practices, including hours of operation; and the number of employees at the source.

B.3. - C.14. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:1145, 1148 (April 2011), LR 37:1391 (May 2011), LR 37:3221, 3233 (November 2011), repromulgated LR 37:3507 (December 2011), amended by the Office of the Secretary, Legal Division, LR 43:

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 AQ367. Such comments must be received no later than January 4, 2017, 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 AQ367. 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 December 28, 2016, at 1:30 p.m. in the Galvez Building, Oliver Pollock 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: Recordkeeping for Sources Exempt from Air Permitting

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 require owners or operators of sources exempt from the requirement to obtain an air permit to determine and maintain records of potential criteria and toxic air pollutant emissions. However, since these owners and operators are currently exempt, they would have already calculated the potential emissions.

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)

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule. Owners or operators of sources exempt from the requirement to obtain an air permit per statute and rule will be affected by the proposed rule. However, there should be no compliance-related costs, workload adjustments, or additional administrative obligations required to comply with the proposed rule, as the owner or operator of an exempt source should have already calculated potential criteria and toxic air pollutant emissions in order to verify eligibility for the exemption.

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
1611#031

Evan Brasseaux
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)

Editor's Note: The following Notice of Intent is being
repromulgated due to a procedural error. The original Notice
can be viewed in the August 2016 edition of the *Louisiana
Register* on pages 1339-1343.

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 December 30, 2016, to Ms. Kathy Hillegas, Executive Director, Board of

Architectural Examiners, 9625 Fenway Avenue, Suite B,
Baton Rouge, LA 70809.

Kathy Hillegas
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
1611#026

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor

Board of Examiners of Certified Shorthand Reporters

Applications for Examinations (LAC 46:XXI.301)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters proposes to amend the CDR examinations rule.

The coinciding Emergency Rule became effective on November 1, 2016.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXI. Certified Shorthand Reporters

Chapter 3. Examinations

§301. Applications for Examinations

A. - F. ...

G. A certified digital reporter (CDR) applicant who is eligible as an official or deputy official reporter will be scheduled for an examination to be given by a designee of the education or examination committee chair. The examination will not be administered for an individual CDR applicant more frequently on an annual basis than the number of examinations scheduled each year by the board in accordance with Subsection A of this Section. A certified digital reporter applicant is not subject to the qualifying exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2555(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:393 (May 1990), LR 17:578 (June 1991), LR 19:1537 (December 1993), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1086 (July 2003), LR 35:64 (January 2009), LR 37:3512 (December 2011), LR 43:

Family Impact Statement

The proposed rule changes have no known impact on family formation, 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 impact of the proposed rules has been considered and will have no impact on poverty.

Provider Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed

rules has been considered and will have no impact on provider.

Public Comments

Interested persons may submit written comments on the proposed changes until 4 p.m., December 10, 2016, to Judge Paul A. Bonin, Chair of Louisiana Board of Examiners of Certified Shorthand Reporters, 1450 Poydras St., Ste. 630, New Orleans, LA 70112.

Judge Paul A. Bonin
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Applications for Examinations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amends *Louisiana Administrative Code* Title 46, Part XXI, Chapter 3, and Section 301 – Applications for Examinations, to create flexibility in scheduling testing of Certified Digital Reporters (CDR) applicants. The proposed rule allows the Certified Shorthand Reporters (CSR) board flexibility in determining the location of testing for CDR examinations.

The proposed rule change will not result in any implementation costs (or savings) to state or local governmental units other than one-time costs directly associated with the publication and promulgation of this proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections to state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will expedite testing by determining the location of the testing and allow the CSR board to respond to the urgent needs of courts for support from Official and Deputy Official Court Reporters.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition or employment.

Judge Paul A. Bonin
Chairman
1611#017

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Commission on Law Enforcement

Peace Officer Training (LAC 22:III.Chapter 47)

In accordance with the provision of R.S. 40:2401, et. seq., the Peace Officer Standards and Training Act, and R.S. 40:905 et seq., which is the Administrative Procedure Act, the Peace Officer Standards and Training Council hereby gives notice of its intent to promulgate rules and regulations relative to the training of peace officers.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4721. Firearms Qualification

A. Pre-Academy Firearms Training

1. Any person employed or commissioned as a peace officer, or reserve or part-time peace officer must successfully complete a pre-academy firearms training program as prescribed by the council within thirty (30) days of employment if that person will be performing the duties of a peace officer before attending a basic or refresher law enforcement training course.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:435 (August 1987), amended LR 25:664 (April 1999), LR 35:1236 (July 2009), LR 43:

§4750. In Service Training and Certification

A. - A.1.b. ...

B. Minimum Training Hours

1. Each calendar year, all certified level 1 and 2 officers must successfully complete, at a minimum, the required number of in-service training hours. This requirement includes “grandfathered” peace officers. These requirements begin the first calendar year after receiving certification or refresher training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 37:1606 (June 2011), amended LR 43:

§4761. Advanced Training

A. Sexual Assault Awareness Training

1. On and after January 1, 2016, each full-time peace officer shall complete a sexual assault awareness training program as provided by the council pursuant to R.S. 40:2405.8. The training program shall be implemented through a series of learning modules developed for this purpose.

B. Lead Homicide Investigator Training

1. Initial Training Course

a. The course content of the initial training course shall be approved by the council.

b. The content shall be determined based on a recommendation from a “curriculum committee” appointed by the council.

c. The “curriculum committee” shall consist of active homicide investigators, who shall advise the council on course content. The committee will consist of board members of the Louisiana Homicide Investigations Association.

2. Waiver

a. The council may issue a waiver for the initial training course on a case-by-case basis declaring that an officer has previously received training and experience that

is substantially equal to or exceeds that provided by the course.

b. A waiver form submitted to the council shall be reviewed by the committee and recommendations made to the council.

3. Certificate

a. Officers who complete the initial basic course or receive a waiver from the council shall be issued a certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 42:274 (February 2016), LR 43:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule has been considered. This proposed rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972 since it outlines the implementation of sexual assault awareness training for peace officers and provides standards for lead homicide investigator training.

Poverty Impact Statement

The proposed Rule should 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 post secondary 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

An analysis of the proposed Rule shows that it will have no impact on small business as defined by Act 820 of 2008.

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 requirement 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 the same level of service.

Public Comments

Interested persons may submit written comments on this proposed rule no later than December 10, 2016 at 5pm to Bob Wertz, Peace Officer Standards and Training Council, Louisiana Commission on Law Enforcement, Box 3133 Baton Rouge, LA 708216.

Jim Craft
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Peace Officer Training

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes may result in expenditure increases for the Louisiana Commission on Law Enforcement (LCLE) as well as certain local governmental units for 1) requiring each full-time peace officer to complete a sexual assault awareness training program and requiring initial training for all lead homicide investigators (Title 22, Part III. Subpart 4. §4761. Advanced Training); 2) requiring all peace officers who are employed, including rehires to attend a pre-academy firearms training program if that person will be performing peace officer duties before attending a basic or refresher law enforcement training course (Title 22, Part III. Subpart 4. §4721. Firearms Qualifications A. Pre-Academy Firearms Training); and 3) requiring, annually, all certified level 1 and 2 officers complete the required number of in-service training hours, including “grandfathered” peace officers (Title 22, Part III. Subpart 4. §4750. In Service Training and Certifications B. Minimum Training Hours). LCLE has allocated approximately \$12,500 in its current operating budget for expenditures associated with the lead investigator training. This will not require an increase over the agency’s current operating budget level.

The proposed rule for the initial training for lead homicide investigators is estimated to impact a range of 50-120 individuals. It is anticipated to be an instructor led course taught once a year. However, the Louisiana Association of Homicide Investigators already has an annual conference, and the Peace Officer Standards and Training (POST) Council has decided that conference topics / contents could serve in lieu of training (waiver on a case by case basis). Therefore, the cost is estimated not to exceed \$12,500 to the state and no cost is anticipated for non-governmental groups. The funding is included in the agency’s existing operating budget and there is not a need for additional revenue for this expenditure. Also, the initial sexual assault awareness training and the annual firearms training is anticipated to be covered during the existing annual in-service training schedule.

The proposed rule for sexual assault training is not anticipated to have a fiscal impact. Approximately 23,000 full-time certified peace officers would be affected by the sexual assault training. Currently, there are online sexual assault training modules available (at no cost); therefore, there is no anticipated fiscal impact to complete the training.

The proposed rule for pre-academy firearm training is not anticipated to have a fiscal impact. The number of peace officers who need pre-academy firearm qualification for refreshers is minimal. In the prior fiscal year the total number of peace officers who had refresher training was 55. The cost for existing in service training is minimal and the POST Council currently accepts more than 21 online courses on its website that is currently available to all peace officers.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will not increase 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 to directly attended persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There is no effect on competition or employment in the public or private sector as a result of this proposed amendment.

Jim Craft
Executive Director
1611#034

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
and
Office of Behavioral Health**

Behavioral Health Services

Healthy Louisiana and Coordinated System of Care Waiver
(LAC 50:XXXIII.Chapters 1, 3 and 7)

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.Chapters 1, 3 and 7 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, Bureau of Health Services Financing and the Office of Behavioral Health amended the provisions governing behavioral health services coordinated by the statewide management organization (SMO) to: 1) narrow the SMO's scope of service administration to coordinated system of care (CSoC) services only; 2) revise the enrollment provisions; and 3) revise the reimbursement methodology to reflect the integration of specialized behavioral health services into the Healthy Louisiana program, formerly known as Bayou Health, by establishing capitation payments for recipients enrolled in managed care organizations (MCOs) (*Louisiana Register*, Volume 41, Number 11).

The department now proposes to amend the provisions governing behavioral health services in order to clarify and align the provisions with the 1915(b) Healthy Louisiana and CSoc Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 1. Healthy Louisiana and Coordinated System of Care Waiver

Chapter 1. Managed Care Organizations and the Coordinated System of Care Contractor

§101. General Provisions

A. The Medicaid Program hereby adopts provisions to establish a comprehensive system of delivery for specialized behavioral health and physical health services. These services shall be administered through the Healthy Louisiana and Coordinated System of Care (CSoc) Waiver under the authority of the Department of Health (LDH), in collaboration with managed care organizations (MCOs) and the coordinated system of care (CSoc) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. ...

C. Managed care organizations shall operate as such, and the CSoc contractor shall operate as a prepaid inpatient health plan (PIHP). The MCOs were procured through a competitive request for proposal (RFP) process. The CSoc contractor was procured through an emergency process consistent with 45 CFR part 92. The MCOs and CSoc contractor shall assist with the state's system reform goals to support individuals with behavioral health and physical health needs in families' homes, communities, schools and jobs.

D. - E. ...

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 38:360 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2353 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

§103. Recipient Participation

A. - A.5. ...

6. full dual eligibles (for behavioral health services only and non-emergency medical transportation (NEMT);

7. children residing in an intermediate care facility for persons with intellectual disabilities (for behavioral health services only and NEMT);

8. all enrollees of waiver programs administered by the LDH Office for Citizens with Developmental Disabilities (OCDD) or the LDH Office of Aging and Adult Services (OAAS) (mandatory for behavioral health services only and NEMT);

9. ...

10. adults residing in a nursing facility (for behavioral health services only and NEMT);

11. supplemental security income/transfer of resources/long-term care related adults and children (for behavioral health services only and NEMT); and

12. transfer of resources/long-term care adults and children (for behavioral health services only and NEMT).

* * *

B. ...

C. Notwithstanding the provisions of Subsection A of this Section, the following Medicaid recipients are excluded from enrollment in the MCOs and the CSoc contractor:

1. for adults and children:

- a. Refugee Cash Assistance;
- b. Refugee Medical Assistance;
- c. Spend-Down Medically Needy;
- d. Specified Low-Income Beneficiaries(SLMB)-only;

- e. Aliens Emergency Services;
- f. Qualified Individuals (QI)1;
- g. Long-Term Care (LTC) co-insurance;
- h. Qualified Disabled and Working Individuals (QDWI); and

- i. Qualified Medicare Beneficiaries (QMB)-only; and

2. adult-only populations excluded from the 1915(b) waiver:

- a. residents of an ICF/ID;

- b. Program of All Inclusive Care for the Elderly (PACE); and
 - c. Take Charge Plus.
3. - 10. Repealed.
- 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 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:1286 (July 2015), LR 41:2354 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

§107. Enrollee Rights and Responsibilities

- A. - A.1.b. ...
 - c. receive assistance with care coordination from the primary care providers (PCP's) office or the enrollee's behavioral health provider;
 - d. Repealed.

A.2. - B.8. ...

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 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2354 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

Chapter 3. Managed Care Organizations and the Coordinated System of Care Contractor Participation

§301. Participation Requirements and Responsibilities

A. - B.4. ...

5. contract only with providers of services who are licensed and/or certified, meet the state of Louisiana credentialing criteria and enrolled with the Bureau of Health Services Financing, or its designated contractor, after this requirement is implemented;

B.6. - B.9. ...

a. are developed by the enrollee's primary care provider (PCP) or behavioral health provider with the enrollee's participation and in consultation with any specialists' providing care to the enrollee, with the exception of treatment plans or plans of care developed for recipients in the Home and Community Based Services (HCBS) Waiver. The wraparound agency shall develop plans of care according to wraparound best practice standards for recipients who receive behavioral health services through the HCBS Waiver;

b. ...

c. are in accordance with any applicable state and federal quality assurance and utilization review standards; and

9.d. - 10.c. ...

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 38:362 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2355 (November 2015), amended by the

Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

§303. Benefits and Services

A. ...

B. The MCO and CSoC contractor:

1. shall ensure that medically necessary services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for which the services are being furnished and shall not be more restrictive than services provided under the Medicaid State Plan;

B.2. - C.1. ...

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 38:362 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2355 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

Chapter 7. Grievance and Appeals Process

§701. General Provisions

A. ...

B. An enrollee, or a provider on behalf of an enrollee, has 60 calendar days from the date on the notice of action in which to file an appeal.

C. An enrollee may file a grievance at any time after an occurrence or incident which is the basis for the grievance.

D. - E. ...

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 38:363 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2356 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

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,

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, December 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: Behavioral Health Services Healthy Louisiana and Coordinated System of Care Waiver

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 \$1,080 (\$540 SGF and \$540 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 \$540 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 amends the provisions governing the delivery of physical and behavioral health services through the Healthy Louisiana and Coordinated System of Care Section 1915(b) Waiver utilizing managed care organizations and the Coordinated System of Care (CSoC) contractor. These provisions give the Medicaid program the authority to continue its mandatory enrollment of certain recipients into managed care. The proposed rule will also clarify and align the rule provisions with the language in the Healthy Louisiana and Coordinated System of Care (CSoC) Waiver application. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the Medicaid program for FY 16-17, FY 17-18 and FY 18-19 since the rule only establishes the Medicaid program's authority to continue to mandate that certain Medicaid recipients continue to receive specific services through managed care delivery system.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1611#058

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Disproportionate Share Hospital Payments Inpatient Psychiatric Services Reimbursement Rate Reduction (LAC 50:V.2903)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.2903 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, 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 were promulgated in a clear and concise manner in the *Louisiana Administrative Code* (LAC) (*Louisiana Register*, Volume 42, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 20, 2016 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments 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 \$552.05 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 43:

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 may have an adverse impact on family functioning, stability or autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of the reduced reimbursement rates.

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 may have an adverse impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation due to the reimbursement rate reductions.

Provider Impact Statement

In compliance with House Concurrent Resolution 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 the total direct and indirect cost to the provider to provide the same level of service due to the reduction in payments. The 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 reduction in payments 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, December 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: Disproportionate Share Hospital Payments—Inpatient Psychiatric Services Reimbursement Rate Reduction

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 general fund programmatic savings of \$212,179 for FY 16-17, \$212,561 for FY 17-18 and \$218,938 FY 18-19. It is anticipated that \$540 (\$270 SGF and \$270 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 63.34 percent in FY 17-18 and 18-19.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$350,210 for FY 16-17, \$367,256 for FY 17-18 and \$378,274 for FY 18-19. It is anticipated that \$270 will be expended in FY 15-16 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 63.34 percent in FY 17-18 and 18-19.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the October 1, 2015 and January 20, 2016 Emergency Rules which amended the provisions governing disproportionate share hospital (DSH) payments to reduce the payments made to non-rural, non-state acute care hospitals for inpatient psychiatric services (three hospitals are being impacted by these provisions). It is anticipated that implementation of this proposed rule will reduce programmatic expenditures for DSH payments by approximately \$562,929 for FY 16-17, \$579,817 for FY 17-18 and \$597,212 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. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce DSH payments. The reduction in payments may adversely impact the financial standing of the provider and could possibly cause a reduction in employment opportunities.

Jen Steele
Medicaid Director
1611#059

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing and Office of Behavioral Health

Home and Community-Based Behavioral Health
Services Waiver (LAC 50:XXXIII.Chapters 81-83)

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.Chapters 81-83 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, Bureau of Health Services Financing amended the provisions governing home and community-based behavioral health services to: 1) narrow the statewide management organization's scope of service administration to coordinated system of care (CSoC) services only; 2) delegate provider certification functions to managed care organizations if the department so chooses; and 3) revise the provisions governing the recipient qualifications and the services covered under the waiver (*Louisiana Register*, Volume 41, Number 11).

The department now proposes to amend the provisions governing home and community-based behavioral health services in order to clarify the provisions to ensure adequate service coordination and delivery.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 9. Home and Community-Based Services

Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to children with mental illness and severe emotional disturbances (SED) by establishing a home and community-based services (HCBS) waiver. This HCBS waiver shall be administered under the authority of the Department of Health, in collaboration with the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B.- 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 38:366 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

§8103. Recipient Qualifications

A. The target population for the Home and Community-Based Behavioral Health Services Waiver program shall be Medicaid recipients who:

1. are from the age of 5 years old through the age of 20 years old effective March 1, 2017:

a. recipients enrolled in the program prior to this date, who are between the ages of 0 through 4 or 20 through 21, may continue to be served through this waiver as long as they continue to meet the level of care criteria; and

b. prospectively recipients must be at least age 5 through age 20 to receive waiver services;

2. - 3. ...

4. require hospital or nursing facility level of care, as determined by the department's designated assessment tools and criteria;

5. meet financial eligibility criteria; and

6. reside in a home and community-based setting as defined in 42 CFR 441.301(c)(4) and in accordance with the department's policy and procedures.

B. ...

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 38:366 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

Chapter 83. Services

§8301. General Provisions

A. - E. ...

F. Services may be provided at a site-based facility, in the community or in the individual's place of residence as outlined in the plan of care. All service locations must meet the home and community-based service setting criteria in 42 CFR 441.301(c)(4) and in accordance with the department's policy and procedures.

G. - G.2. ...

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 38:367 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

§8305. Covered Services

A. - C.3. ...

4. services rendered in an institution for mental disease or any other institutional setting as defined in 42 CFR 441.301(c)(4).

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 38:367 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2362 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:

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, 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, December 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: Home and Community-Based
Behavioral Health Services Waiver**

**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 \$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.

**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 \$378 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 amends the provisions governing home and community-based behavioral health services delivered through the Section 1915(c) Coordinated System of Care (CSoc) Waiver in order to clarify the provisions to ensure adequate service coordination and delivery, and revise the qualifying criteria to change the age limits for services. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the Medicaid program for FY 16-17, FY 17-18 and FY 18-19 since the number of waiver opportunities available will not change (capped at 2400) and the existing waiver participants will continue to receive services regardless of the changes in the qualifying criteria.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1611#060

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Home and Community-Based Services Waivers
Adult Day Health Care Waiver
Transportation Costs
(LAC 50:XXI.2905)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.2905 under 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, amended the provisions governing the reimbursement for Adult Day Health Care (ADHC) Waiver services as a result of changes to the provision of services and discharge criteria (*Louisiana Register*, Volume 41, Number 2).

The department now proposes to amend the provisions governing the ADHC Waiver in order to better define the

cost categories for the reporting of costs associated with transportation services covered under the waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 3. Adult Day Health Care

Chapter 29. Reimbursement

§2905. Cost Categories Included in the Cost Report

A. - D.10. ...

E. Transportation Costs

1. ...

2. Payroll Taxes, Transportation—the cost of the employer’s portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for drivers.

a. - c. Repealed.

3. Employee Benefits, Transportation—the cost of group insurance, pensions, uniform allowances and other employee benefits related to drivers.

4. Workers’ Compensation, Transportation—the cost of workers’ compensation insurance for drivers.

5. Non-Emergency Medical Transportation—the cost of purchased non-emergency medical transportation services including, but not limited to:

a. payments to employees for use of their personal vehicle(s);

b. ambulance companies; and

c. other transportation companies for transporting patients of the center.

6. Interest Expenses, Vehicles—interest paid or accrued on loans used to purchase vehicles.

7. Property Insurance, Vehicles—the cost of vehicle insurance.

8. Vehicle Expenses—vehicle maintenance and supplies, including gas and oil.

9. Lease, Automotive—the cost of leasing vehicles used for patient care. A mileage log must be maintained. If a leased vehicle is used for both patient care and personal purposes, cost must be allocated based on the mileage log.

10. Total Transportation Costs.

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 Aging and Adult Services, LR 34:2166 (October 2008), repromulgated LR 34:2571 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2626 (September 2011), amended LR 41:381 (February 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:

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, 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, December 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: Home and Community-Based Services Waivers—Adult Day Health Care Waiver Transportation Costs

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 \$540 (\$270 SGF and \$270 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 \$270 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 amends the provisions governing the Adult Day Health Care (ADHC) Waiver in order to better define the cost categories for the reporting of costs associated with transportation services covered under the waiver. It is anticipated that implementation of this proposed rule will have no costs, but may be beneficial to ADHC Waiver providers for FY 16-17, FY 17-18 and FY 18-19 by helping to clarify the costs reporting categories to ensure compliance with program requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1611#061

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Public Hospitals Supplemental Payments
(LAC 50:V.963)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.963 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, Bureau of Health Services Financing amended the provisions governing inpatient hospital services to provide supplemental Medicaid payments to qualifying non-rural, non-state public hospitals (*Louisiana Register*, Volume 39, Number 6). The department promulgated an Emergency Rule which amended the reimbursement methodology governing inpatient hospital services in order to amend the provisions governing supplemental Medicaid payments to qualifying non-rural, non-state public hospitals (*Louisiana Register*, Volume 41, Number 10). This proposed Rule is being promulgated in order to continue the provisions of the October 1, 2015 Emergency Rule.

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

§963. Public Hospitals

A. - B.1. ...

a. be designated as a major teaching hospital by the department as of July 1, 2015 and have at least 300 licensed acute hospital beds; or

B.1.b. - E. ...

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 38:2772 (November 2012), amended LR 38:3181 (December 2012), repromulgated LR 39:95 (January 2013), amended LR 39:1471 (June 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a 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 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 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 a reduction in Medicaid payments for inpatient hospital services. The 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 reduction in payments 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, December 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: Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Public Hospitals Supplemental Payments**

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 general fund programmatic

savings of \$7,475,713 for FY 16-17, \$7,479,851 for FY 17-18 and \$7,704,247 FY 18-19. It is anticipated that \$432 (\$216 SGF and \$216 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 63.34 percent in FY 17-18 and 18-19.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that federal revenue collections will decrease by approximately \$12,332,889 for FY 16-17, \$12,923,454 for FY 17-18 and \$13,311,157 for FY 18-19. It is anticipated that \$216 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 63.34 percent in FY 17-18 and 18-19.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the October 1, 2015 Emergency Rule which amended the reimbursement methodology governing inpatient hospital services in order to amend the provisions governing supplemental Medicaid payments to qualifying non-rural, non-state public hospitals (one hospital is impacted by these provisions). It is anticipated that implementation of this proposed rule will decrease programmatic expenditures for inpatient hospital services by approximately \$19,809,034 for FY 16-17, \$20,403,305 for FY 17-18 and \$21,015,404 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. However, the reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Jen Steele
Medicaid Director
1611#062

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Intermediate Care Facilities for
Persons with Intellectual Disabilities
Evacuation and Temporary Sheltering Costs
(LAC 50:VII.33103 and 33105)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.33103 and adopt §33105 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 intermediate care facilities for persons with intellectual disabilities

(ICFs/ID) to establish reimbursement for complex care services provided to Medicaid recipients residing in non-state ICFs/ID (*Louisiana Register*, Volume 42, Number 2).

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID to establish provisions governing evacuation and temporary sheltering costs incurred during a declared disaster or emergency event to ensure evacuating ICFs/ID continue to receive vendor payments while providing essential care and services to residents at a host site when they are displaced (*Louisiana Register*, Volume 42, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 13, 2016 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long-Term Care Services

Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

Chapter 331. Vendor Payments

§33103. Payment Limitations

A. Temporary Absence of the Client. A client's temporary absence from an ICF/ID will not interrupt the monthly vendor payment to the ICF/ID, provided the following conditions are met:

1. the ICF/ID keeps a bed available for the client's return; and

2. the absence is for one of the following reasons:

a. ...

b. leave of absence. A temporary stay outside the ICF/ID provided for in the client's written individual habilitation plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30) and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30-consecutive day limit and is included in the written individual habilitation plan. These exceptions are as follows:

i.-v. ...

NOTE: Elopements and unauthorized absences under the individual habilitation plan count against allowable leave days. However, Title XIX eligibility is not affected if the absence does not exceed 30 consecutive days and if the ICF/ID has not discharged the client.

3. ...

4. a period of 24 continuous hours or more shall be considered an absence. Likewise, a temporary leave of absence for hospitalization or a home visit is broken only if the client returns to the ICF/ID for 24 hours or longer;

5. upon admission, a client must remain in the ICF/ID at least 24 continuous hours in order for the ICF/ID to submit a payment claim for a day of service or reserve a bed;

EXAMPLE: A client admitted to an ICF/ID in the morning and transferred to the hospital that afternoon would not be eligible for any vendor payment for ICF/ID services.

6. ...

7. the ICF/ID shall promptly notify DHH of absences beyond the applicable thirty- or seven-day limitations. Payment to the ICF/MR shall be terminated from the thirty-first or eighth day, depending upon the leave of absence. Payment will commence after the individual has been determined eligible for Title XIX benefits and has remained in the ICF/ID for 30 consecutive days;

8. the limit on Title XIX payment for leave days does not mean that further leave days are prohibited when provided for in the individual habilitation plan. After the Title XIX payment limit is met, further leave days may be arranged between the ICF/ID and the client, family or responsible party. Such arrangements may include the following options.

a. The ICF/ID may charge the client, family or responsible party an amount not to exceed the Title XIX daily rate.

b. The ICF/ID may charge the client, family or responsible party a portion of the Title XIX daily rate.

c. The ICF/ID may absorb the cost into its operation costs.

B. Temporary Absence of the Client Due to Evacuations. When local conditions require evacuation of ICF/ID residents, the following procedures apply.

1. When clients are evacuated to a family's or friend's home at the ICF/ID's request, the ICF/MR shall not submit a claim for a day of service or leave day, and the client's liability shall not be collected.

2. When clients go home at the family's request or on their own initiative, a leave day shall be charged.

3. When clients are admitted to the hospital for the purpose of evacuation of the ICF/ID, Medicaid payment shall not be made for hospital charges.

4. - 5. Repealed.

C. Payment Policy in regard to Date of Admission, Discharge, or Death

1. Medicaid (Title XIX) payments shall be made effective as of the admission date to the ICF/ID. If the client is medically certified as of that date and if either of the following conditions is met:

a. the client is eligible for Medicaid benefits in the ICF/ID (excluding the medically needy); or

b. the client was in a continuous institutional living arrangement (nursing home, hospital, ICF/ID, or a combination of these institutional living arrangements) for 30 consecutive days; the client must also be determined financially eligible for medical assistance.

2. The continuous stay requirement is:

a. ...

b. not interrupted by the client's absence from the ICF/ID when the absence is for hospitalization or leave of absence which is part of the written individual habilitation plan.

3. The client's applicable income is applied toward the ICF/ID fee effective with the date Medicaid payment is to begin.

4. - 5. ...

NOTE: The ICF/ID shall promptly notify LDH/BHSF of admissions, death, and/or all discharges.

D. Advance Deposits

1. An ICF/ID shall neither require nor accept an advance deposit from an individual whose Medicaid (Title XIX) eligibility has been established.

EXCEPTION: An ICF/ID may require an advance deposit for the current month only on that part of the total payment which is the client's liability.

2. ...

E. Retroactive Payment. When individuals enter an ICF/ID before their Medicaid (Title XIX) eligibility has been

established payment for ICF/ID services is made retroactive to the first day of eligibility after admission.

F. Timely Filing for Reimbursements. Vendor payments cannot be made if more than 12 months have elapsed between the month of initial services and submittal of a claim for these services. Exceptions for payments of claims over 12 months old can be made with authorization from LDH/BHSF only.

G. Refunds to Clients

1. When the ICF/ID receives vendor payments, it shall refund any fees for services collected from clients, family or responsible party by the end of the month in which vendor payment is received.

2. Advance payments for a client's liability (applicable income) shall be refunded promptly if he/she leaves the ICF/ID.

3. The ICF/ID shall adhere to the following procedures for refunds.

a. The proportionate amount for the remaining days of the month shall be refunded to the client, family, or the responsible party no later than 30 days following the date of discharge. If the client has not yet been certified, the procedures spelled out in §33103.G.1 above shall apply.

b. No penalty shall be charged to the client, family, or responsible party even if the circumstances surrounding the discharge occurred as follows:

i. - ii. ...

iii. within some other "minimum stay" period established by the ICF/ID.

c. ...

H. ICF/ID Refunds to the Department

1. Nonparticipating ICF/ID. Vendor payments made for services performed while an ICF/ID is in a nonparticipating status with the Medicaid Program shall be refunded to the department.

2. Participating ICF/ID. A currently participating Title XIX, ICF/ID shall correct billing or payment errors by use of appropriate adjustment void or patient liability (PLI) adjustment forms.

1. Sitters. An ICF/ID will neither expect nor require a client to have a sitter. However, the ICF/ID shall permit clients, families, or responsible parties directly to employ and pay sitters when indicated, subject to the following limitations.

1. The use of sitters will be entirely at the client's, family's, or responsible party's discretion. However, the ICF/ID shall have the right to approve the selection of a sitter. If the ICF/ID disapproves the selection of the sitter, the ICF/ID will provide written notification to the client, family, and/or responsible party, and to the department stating the reasons for disapproval.

2. - NOTE. ...

3. Payment to sitters is the direct responsibility of the ICF/ID facility when:

a. - c. ...

4. A sitter will be expected to abide by the ICF/ID's rules, including health standards and professional ethics.

5. The presence of a sitter does not absolve the ICF/ID of its full responsibility for the client's care.

6. The ICF/ID is not responsible for providing a sitter if one is required while the resident is on home leave.

J. Tips. The ICF/ID shall not permit tips for services rendered by its employees.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:682 (April 1999), LR 31:1082 (May 2005), repromulgated LR 31:2257 (September 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

§33105. Evacuation and Temporary Sheltering Costs

A. Intermediate care facilities for persons with intellectual disabilities required to participate in an evacuation, as directed by the appropriate parish or state official, or which act as a host shelter site may be entitled to reimbursement of its documented and allowable evacuation and temporary sheltering costs.

1. The expense incurred must be in excess of any existing or anticipated reimbursement from any other sources, including the Federal Emergency Management Agency (FEMA) or its successor.

2. ICFs/ID must first apply for evacuation or sheltering reimbursement from all other sources and request that the department apply for FEMA assistance on their behalf.

3. ICFs/ID must submit expense and reimbursement documentation directly related to the evacuation or temporary sheltering of Medicaid residents to the department.

B. Eligible Expenses. Expenses eligible for reimbursement must occur as a result of an evacuation and be reasonable, necessary, and proper. Eligible expenses are subject to audit at the department's discretion and may include the following.

1. Evacuation Expenses. Evacuation expenses include expenses from the date of evacuation to the date of arrival at a temporary shelter or another ICF/ID. Evacuation expenses include:

a. resident transportation and lodging expenses during travel;

b. nursing staff expenses when accompanying residents, including:

i. transportation;

ii. lodging; and

iii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented:

(a). the direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department;

c. any additional allowable costs that are directly related to the evacuation and that would normally be allowed under the ICF/ID rate methodology.

2. Non-ICF/ID Facility Temporary Sheltering Expenses. Non-ICF/ID facility temporary sheltering expenses include expenses from the date the Medicaid residents arrive at a non-ICF/ID facility temporary shelter to the date all Medicaid residents leave the shelter. A non-ICF/ID facility temporary shelter includes shelters that are not part of a licensed ICF/ID and are not billing for the residents under the ICF/ID reimbursement methodology or

any other Medicaid reimbursement system. Non-ICF/ID facility temporary sheltering expenses may include:

a. additional nursing staff expenses including:

i. lodging; and

ii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented:

(a). the direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department;

b. care-related expenses incurred in excess of care-related expenses prior to the evacuation;

c. additional medically necessary equipment such as beds and portable ventilators that are not available from the evacuating nursing facility and are rented or purchased specifically for the temporary sheltered residents; and

i. these expenses will be capped at a daily rental fee not to exceed the total purchase price of the item;

ii. the allowable daily rental fee will be determined by the department;

d. any additional allowable costs as determined by the department and that are directly related to the temporary sheltering and that would normally be allowed under the ICF/ID reimbursement methodology.

3. Host ICF/ID Temporary Sheltering Expenses. Host ICF/ID temporary sheltering expenses include expenses from the date the Medicaid residents are admitted to a licensed ICF/ID to the date all temporary sheltered Medicaid residents are discharged from the ICF/ID, not to exceed a six-month period.

a. The host ICF/ID shall bill for the residents under Medicaid's ICF/ID reimbursement methodology.

b. Additional direct care expenses may be submitted when a direct care expense increase of 10 percent or more is documented.

i. The direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department.

C. Payment of Eligible Expenses

1. For payment purposes, total eligible Medicaid expenses will be the sum of nonresident-specific eligible expenses multiplied by the facility's Medicaid occupancy percentage plus Medicaid resident-specific expenses.

a. If Medicaid occupancy is not easily verified using the evacuation resident listing, the Medicaid occupancy from the most recently filed cost report will be used.

2. Payments shall be made as quarterly lump-sum payments until all eligible expenses have been submitted and paid. Eligible expense documentation must be submitted to the department by the end of each calendar quarter.

3. All eligible expenses documented and allowed under §33105 will be removed from allowable expenses when the ICF/ID's Medicaid cost report is filed. These expenses will not be included in the allowable cost used to set ICF/ID reimbursement rates in future years.

a. Equipment purchases that are reimbursed on a rental rate under §33105.B.2.c may have their remaining basis included as allowable cost on future costs reports provided that the equipment is in the ICF/ID and being used.

If the remaining basis requires capitalization then depreciation will be recognized.

4. Payments shall remain under the upper payment limit cap for ICFs/ID.

D. When an ICF/ID resident is evacuated to a temporary sheltering site (an unlicensed sheltering site or a licensed ICF/ID) for less than 24 hours, the Medicaid vendor payment to the evacuating facility will not be interrupted.

E. When an ICF/ID resident is evacuated to a temporary sheltering site (an unlicensed sheltering site or a licensed NF) for greater than 24 hours, the evacuating ICF/ID may submit the claim for Medicaid vendor payment for a maximum of five days, provided that the evacuating ICF/ID provides sufficient staff and resources to ensure the delivery of essential care and services to the resident at the temporary shelter site.

F. When an ICF/ID resident is evacuated to a temporary shelter site, which is an unlicensed sheltering site, for greater than five days, the evacuating ICF/ID may submit the claim for Medicaid vendor payment for up to an additional 15 days, provided that the evacuating ICF/ID:

1. has received an extension to stay at the unlicensed shelter site; and
2. provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

G. When an ICF/ID resident is evacuated to a temporary shelter site, which is a licensed ICF/ID, for greater than 5 days, the evacuating ICF/ID may submit the claim for Medicaid vendor payment for an additional period, not to exceed 55 days, provided that:

1. the host/receiving ICF/ID has sufficient licensed and certified bed capacity for the resident, or the host/receiving ICF/ID has received departmental and/or CMS approval to exceed the licensed and certified bed capacity for a specified period; and
2. the evacuating ICF/ID provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

H. If an ICF/ID resident is evacuated to a temporary shelter site which is a licensed ICF/ID, the receiving/host ICF/ID may submit claims for Medicaid vendor payment under the following conditions:

1. beginning day two and continuing during the "sheltering period" and any extension period, if the evacuating nursing home does not provide sufficient staff and resources to ensure the delivery of essential care and services to the resident and to ensure the needs of the residents are met;
2. upon admission of the evacuated residents to the host/receiving ICF/ID; or
3. upon obtaining approval of a temporary hardship exception from the department, if the evacuating ICF/ID is not submitting claims for Medicaid vendor payment.

I. Only one ICF/ID may submit the claims and be reimbursed by the Medicaid Program for each Medicaid resident for the same date of service.

J. An ICF/ID may not submit claims for Medicaid vendor payment for non-admitted residents beyond the

expiration of its extension to exceed licensed (and/or certified) bed capacity or expiration of its temporary hardship exception.

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 43:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring continued access to ICF/ID services for residents who have been evacuated during a declared disaster or emergency event.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 by reducing the financial burden on families who may encounter expenses when family members are evacuated from ICFs/ID during declared disasters or emergency events.

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. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, December 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.

Rebekah E. Gee MD, MPH
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Intermediate Care Facilities for
Persons with Intellectual Disabilities
Evacuation and Temporary Sheltering Costs**

**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. There is no anticipated net increase in vendor payments as these provisions will only clarify which facility will receive the vendor payment. It is anticipated that \$2,052 (\$1,026 SGF and \$1,026 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 not affect revenue collections other than the federal share of the promulgation costs for FY 16-17. It is anticipated that \$1,026 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 October 13, 2016 Emergency Rule which amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) to establish provisions governing evacuation and temporary sheltering costs incurred during a declared disaster or emergency event to ensure evacuating ICFs/ID continue to receive vendor payments while providing essential care and services to residents at a host site when they are displaced. It is anticipated that implementation of this proposed rule will not have economic costs, but will be beneficial to ICFs/ID facilities for FY 16-17, FY 17-18 and FY 18-19 by ensuring continued vendor payments for services delivered during an evacuation.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1611#063

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

**Nursing Facilities
Evacuation and Temporary Sheltering Costs
(LAC 50:II.20019)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.20019 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.

In compliance with the directives of Act 540 of the 2006 Regular Session of the Louisiana Legislature, the

Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for nursing facilities to provide for the facility-specific reimbursement of documented and allowable evacuation and temporary sheltering costs of Medicaid-certified nursing facilities (*Louisiana Register*, Volume 38, Number 5).

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the May 20, 2008 Rule governing the reimbursement methodology for nursing facilities to amend the provisions governing evacuation and temporary sheltering costs in order to ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site when they are displaced (*Louisiana Register*, Volume 42, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 13, 2016 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20019. Evacuation and Temporary Sheltering Costs

[Formerly LAC 50:VII.1319]

A. - B.1.b.iii.(a). ...

c. any additional allowable costs as defined in the CMS Publication 15-1-21, last modified 9/28/2012, that are directly related to the evacuation and that would normally be allowed under the nursing facility case-mix rate.

2. - 2.a.ii.(a). ...

b. care-related expenses as defined in LAC 50:II.20005 and incurred in excess of care-related expenses prior to the evacuation;

c. - c.ii. ...

d. any additional allowable costs as defined in the CMS Publication 15-1-21, last modified 9/28/2012, that are directly related to the temporary sheltering and that would normally be allowed under the nursing facility case-mix rate.

3. - 3.b.i. ...

C. Payment of Eligible Expenses

1. - 2. ...

3. All eligible expenses documented and allowed under §20019 will be removed from allowable expenses when the nursing facility's Medicaid cost report is filed. These expenses will not be included in the allowable cost used to set case-mix reimbursement rates in future years.

a. Equipment purchases that are reimbursed on a rental rate under §20019.B.2.c may have their remaining basis included as allowable cost on future costs reports provided that the equipment is in the nursing facility and being used. If the remaining basis requires capitalization under CMS Publication 15-1-21 guidelines, last modified 9/28/2012, then depreciation will be recognized.

4. ...

D. When a nursing facility (NF) resident is evacuated to a temporary shelter site (an unlicensed sheltering site or a licensed NF) for less than 24 hours, the Medicaid vendor payment to the evacuating facility will not be interrupted.

E. When a NF resident is evacuated to a temporary shelter site (an unlicensed sheltering site or a licensed NF)

for greater than 24 hours, the evacuating nursing facility may submit the claim for Medicaid vendor payment for a maximum of five days, provided that the evacuating nursing facility provides sufficient staff and resources to ensure the delivery of essential care and services to the resident at the temporary shelter site.

F. When a NF resident is evacuated to a temporary shelter site, which is an unlicensed sheltering site, for greater than five days, the evacuating nursing facility may submit the claim for Medicaid vendor payment for up to an additional 15 days, provided that the evacuating nursing facility:

1. has received an extension to stay at the unlicensed shelter site; and
2. provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

G. When a NF resident is evacuated to a temporary shelter site, which is a licensed nursing home, for greater than five days, the evacuating nursing facility may submit the claim for Medicaid vendor payment for an additional period, not to exceed 55 days, provided that:

1. the host/receiving nursing home has sufficient licensed and certified bed capacity for the resident, or the host/receiving nursing home has received departmental and/or CMS approval to exceed the licensed and certified bed capacity for a specified period; and
2. the evacuating nursing facility provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

H. If a NF resident is evacuated to a temporary shelter site which is a licensed NF, the receiving/host nursing home may submit claims for Medicaid vendor payment under the following conditions:

1. beginning day two and continuing during the "sheltering period" and any extension period, if the evacuating nursing home does not provide sufficient staff and resources to ensure the delivery of essential care and services to the resident and to ensure the needs of the residents are met;
2. upon admission of the evacuated residents to the host/receiving nursing facility; or
3. upon obtaining approval of a temporary hardship exception from the department, if the evacuating NF is not submitting claims for Medicaid vendor payment.

I. Only one nursing facility may submit the claims and be reimbursed by the Medicaid Program for each Medicaid resident for the same date of service.

J. A nursing facility may not submit claims for Medicaid vendor payment for non-admitted residents beyond the expiration of its extension to exceed licensed (and/or certified) bed capacity or expiration of its temporary hardship exception.

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 34:879 (May 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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 Provider Impact

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring continued access to nursing facility services for residents who have been evacuated during a declared disaster or emergency event.

Poverty Provider Impact

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 by reducing the financial burden on families who may encounter expenses when family members are evacuated from nursing facilities during declared disasters or emergency events.

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. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, December 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nursing Facilities Evacuation and Temporary Sheltering Costs

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. There is no anticipated

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 43:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring continued access to psychiatric residential treatment facilities for children under the age of 21.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child,

net increase in vendor payments as these provisions will only clarify which facility will receive the vendor payment. It is anticipated that \$864 (\$432 SGF and \$432 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 not affect revenue collections other than the federal share of the promulgation costs for FY 16-17. It is anticipated that \$432 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 October 13, 2016 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing evacuation and temporary sheltering costs to ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site. It is anticipated that implementation of this proposed rule will not have economic costs, but will be beneficial to nursing facilities for FY 16-17, FY 17-18 and FY 18-19 by ensuring continued vendor payments for services delivered during an evacuation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1611#064

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**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 proposes to amend LAC 48:I.9047 as authorized by R.S. 40:2009. 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 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 42, Number 2).

The department promulgated an Emergency Rule which amended the provisions governing PRTFs in order to revise the minimum staffing requirements for staff-to-client ratios (*Louisiana Register*, Volume 42, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2016 Emergency Rule.

individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 by reducing the financial burden on families who may encounter expenses when children under the age of 21 are unable to receive care in a psychiatric residential treatment facility.

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 may have an impact on the staffing level requirements or qualifications required to provide the same level of service if the provider determines the current number of staff is not needed, and hence may reduce direct or indirect cost to the provider to provide the same level of service in the event the current staffing levels are reduced. The proposed Rule may also have a positive impact on the provider's ability to provide the same level of service as described in HCR 170 since providers may be able to provide the same level of services with fewer staff.

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, December 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: Psychiatric Residential Treatment 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 \$540 (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 continues the provisions of the May 20, 2016 Emergency Rule which amended the provisions governing the licensing standards for psychiatric residential treatment facilities (PRTFs) in order to revise the minimum staffing requirements for staff-to-client ratios to increase the number of clients a staff person may serve. It is anticipated that the implementation of this proposed rule may reduce economic costs to PRTFs and have benefits in FY 16-17, FY 17-18 and FY 18-19 in the event staffing costs are reduced if facilities are able to provide services with fewer staff.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello
Health Standards Section Director
1611#065

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Office of Public Health

Special Supplemental Nutrition Program for Women,
Infants and Children (WIC) (LAC 48:V.Chapters 41-45)

Under the authority of R.S. 46:972 and in accordance the Administrative Procedure Act, notice is hereby given that the Louisiana Department of Health, Office of Public Health (LDH-OPH), amends Subpart 15 [Supplemental Food Services for Women, Infants, and Children (WIC)] of Part V (Preventive Health Services) of Title 48 (Public Health—General) of the *Louisiana Administrative Code* (LAC).

The proposed Rule amends Subpart 15 [Supplemental Food Services for Women, Infants, and Children (WIC)] of Part V (Preventive Health Services) of Title 48 (*Public Health—General*) of the *Louisiana Administrative Code* (LAC). This proposed Rule ensures that the state remains in compliance with applicable federal regulations of the United States Department of Agriculture (USDA), adds definitions, and corrects obsolete and typographical references. The following Sections are proposed for amendment: Sections 4101 and 4103 of Chapter 41 – General Provisions; Sections 4301, 4303, 4305, 4307 and 4309 of Chapter 43, Participant Eligibility and Certification; and Sections 4503, 4505, 4507, 4509, 4511 and 4513 of Chapter 45, Vendor Selection, Participation and Sanctions.

These amendments are also necessary to ensure that the State of Louisiana remains in compliance with applicable federal regulations of the United States Department of Agriculture (USDA). Failure to timely adopt such amendments may cause federal monetary sanctions to be imposed against the Louisiana WIC program. At this time, the Louisiana WIC program intends to publish a Notice of Intent under regular rulemaking procedures in the November 20, 2016, Louisiana Register. This action follows an

Emergency Rule that was issued and effective as of October 1, 2016. LDH will need to issue an additional Emergency Rule until a final Rule is in place. The anticipated date for a final Rule is January 20, 2017.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 15. Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Chapter 41. General Provisions

§4101. Purpose and Scope

A. The purpose of LAC 48:V.Subpart 15 is to adopt applicable and corresponding state regulations enacted under the authority of the federal Secretary of Agriculture in order to implement the federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC program) within the state of Louisiana. Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), as amended, states in part that “Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program to provide supplemental foods and nutrition education, including breastfeeding promotion and support, through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons.” The program shall be supplementary to the Supplemental Nutrition Assistance Program (SNAP); any program under which foods are distributed to needy families in lieu of SNAP benefits; and, receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

B. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC), also hereinafter known as “program” or “the program”, provides supplemental foods and nutrition education, including breastfeeding promotion and support, for women, infants and children. It is federally funded through the U.S. Department of Agriculture via cash grants to state agencies which administer the program. The Louisiana Department of Health, Office of Public Health, Center for Community and Preventive Health, Bureau of Nutrition Services, shall be responsible for the administration of the program in Louisiana. Extensive regulations have been published by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture in 7 CFR Part 246. Federal regulations stipulate participation requirements, length of certifications, certification processes and standards, participant responsibilities and participant grievance rights. If there is a conflict with any portion of LAC 48:V.Subpart 15 and 7 CFR Part 246, the provisions of 7 CFR Part 246 shall supersede the provisions of LAC 48:V.Subpart 15.

C. The annual Louisiana WIC program state plan, including a comprehensive policy and procedure manual, is available for review by any interested party at both of the Bureau of Nutrition Services offices in Louisiana, as follows: Room 828, 628 North Forth Street, Baton Rouge,

LA 70802 and Suite 1906, 1450 Poydras Street, New Orleans, LA 70112.

D. As described in 7 CFR Part 246, the agency is to provide supplemental foods and nutrition education, including breastfeeding promotion and support, to categorically eligible participants who are income eligible and found to be at nutritional risk. The program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons. The WIC state agency is responsible for providing services to as many eligible participants as funding allows.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR Part 246, P. L. 95-627, and 41 USC 1786. Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4103. Definitions

A. The following words and terms are defined for the purposes of this Subpart and for all contracts, guidelines, instructions, forms and other documents related hereto.

Above-50-Percent (A50) Vendors—vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS. A50 vendors are subject to payment limitations that ensure that the prices of A50 vendors do not result in higher total food costs if program participants transact their food instruments at A50 vendors rather than at non-A50 (“regular”) vendors.

Administrative Review—a procedure by which a vendor may appeal an adverse action by the state agency.

Applicants—pregnant women, breastfeeding women, postpartum women, infants, and children who are applying to receive WIC benefits, and the breastfed infants of applicant breastfeeding women. Applicants include individuals who are currently participating in the program but are re-applying because their certification period is about to expire.

Authorized Supplemental Foods/WIC-Approved Foods—those supplemental foods authorized by the state agency for issuance to participants.

Authorized WIC Vendor (Vendor)—a retail grocery store that has submitted a complete WIC vendor application and any required supporting documentation, passed a pre-authorization on-site review, completed a training program, signed a formal vendor agreement binding the vendor to follow all WIC rules and policies upon authorization, and received a signed authorization letter from the Louisiana WIC program. Only authorized WIC vendors may transact WIC food instruments (FIs)/cash-value vouchers (CVVs).

Breastfeeding—the practice of feeding a mother's breastmilk to her infant(s) on an average frequency of at least once a day.

Breastfeeding Women—women up to 1 year postpartum who are breastfeeding their infants.

Cash-Value Voucher (CVV)—a fixed-dollar amount check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain authorized fruits and vegetables.

Categorical Eligibility—persons who meet the definitions of pregnant women, breastfeeding women, postpartum women, infants or children.

Certification—the implementation of criteria and procedures to assess and document each applicant's eligibility for the program.

Change of Location—the move of a WIC vendor from one physical address to another address.

Change of Ownership—a change that results when all of the assets of the store are sold or transferred to a new owner or business entity. This includes adding a new partner(s).

Children—persons who have had their first birthday but have not yet attained their fifth birthday.

Clinic—a facility where applicants are certified.

CMP—civil money penalty.

Competent Professional Authority—an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the state agency may authorize to serve as a competent professional authority: physicians, nutritionists (bachelor's or master's degree in nutritional sciences, community nutrition, clinical nutrition, dietetics, public health nutrition or home economics with emphasis in nutrition), dieticians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the state medical certifying authority), or state or local medically trained health officials. This definition also applies to an individual who is not on the staff of the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on the staff of the local agency.

Competitive Price Criteria (CPC)—price level at or below which WIC-approved foods shall be priced in order for a vendor applicant to be considered for authorization. The state agency determines CPC for each WIC-approved food item based on shelf prices for vendors within each peer group of regular vendors. CPC varies by vendor peer group. All vendors are subject to the CPC at all times in order to ensure that vendors do not raise prices, subsequent to selection, to a level that would make such vendors ineligible for authorization.

Confidentiality—in the context of the WIC program, not using or disclosing any confidential applicant, participant or vendor information gathered as a result of participation in the WIC program. Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source. Vendors are required to keep confidential the customer's eligibility for and receipt of WIC benefits. Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address, telephone number, web site/e-mail address, store type, and authorization status.

Corrective Action Plan (CAP)—any plan developed by the state agency, or by a vendor and approved by the state

agency, to correct deficiencies identified by the state agency in a vendor's compliance with WIC rules, regulations, policies, and/or procedures. Vendors shall implement CAPs when required by the state agency. CAPs may include, but are not limited to, requirements to provide store personnel or stock rotation training and/or to correct inappropriate WIC FI/CVV processing procedures used by the vendor.

CSFP—the Commodity Supplemental Food Program administered by the U.S. Department of Agriculture, authorized by section 4 of the Agriculture and Consumer Protection Act of 1973 [7 U.S.C. 1431(a)], as amended, and governed by 7 CFR Part 247.

Days—calendar days.

Disqualification—the act of ending the program participation of a participant, or authorized state or local agency, whether as a punitive sanction or for administrative reasons and the act of ending program participation of an authorized WIC vendor for violations of the vendor agreement and/or federal or state rules, regulations or policy governing the WIC program.

Documentation—the presentation of written documents which substantiate oral, written, or electronic statements made by an applicant or participant or a person applying on behalf of an applicant or a vendor.

Drug—

- a. beverage containing alcohol;
- b. controlled substance (having the meaning given it in section 102 of the Controlled Substances Act of 1970 (21 U.S.C. 802(6)), as amended; or
- c. controlled substance analogue (having the meaning given it in section 102 of the Controlled Substances Act of 1970 [21 U.S.C. 802(32)], as amended).

Dual Participation—simultaneous participation in the program in more than one WIC clinic, or participation in the program and in the CSFP during the same period of time.

Electronic Signature—an electronic sound, symbol, or process, attached to or associated with an application or other record and executed and or adopted by a person with the intent to sign the record.

Family—a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

FNS—the Food and Nutrition Service of the U.S. Department of Agriculture.

Food Costs—the costs of supplemental foods, determined in accordance with 7 CFR §246.14(b).

Food Delivery System—the method used by state and local agencies to provide supplemental foods to participants.

Food Instrument (FI)—a voucher, check, electronic benefits transfer (EBT) card, coupon or other document that is used by a participant to obtain WIC-approved foods.

Food Package—WIC eligible food items listed on WIC food instruments in designated quantities.

Food Sales—sales of all SNAP eligible foods intended for home preparation and consumption, including meat, fish, and poultry; bread and cereal products; dairy products; and fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be

purchased with SNAP benefits, such as hot foods or food that will be eaten in the store.

Fraud and Abuse—conduct that violates WIC program rules, regulations, policies, and/or procedures, including, but not limited to, those violations leading to disqualification, as identified in the sanction schedule.

Full-Line Grocery Store—a retail food store/market (as defined under LAC 51:XXIII.101.A.) that stocks, and has on hand at all times, at least:

- a. 5 varieties of cereal with 5 or more units of each variety;
- b. 3 varieties of bread or tortillas with 5 or more units of each variety;
- c. 4 varieties of fresh fruits with at least 5 units of each variety;
- d. 4 varieties of fresh vegetables with at least 5 units of each variety; and
- e. 4 varieties of fresh or frozen meat, poultry or fish with at least 5 units of each variety;
- f. 2 varieties of rice with 6 or more units of each variety.

Health Services—ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

Homeless Facility—the following types of facilities which provide meal service:

- a. a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;
- b. a facility that provides a temporary residence for individuals intended to be institutionalized; or
- c. a public or private place not designed for, or normally used as, a regular sleeping accommodation for human beings.

Homeless Individual—a woman, infant or child:

- a. who lacks a fixed and regular nighttime residence; or
- b. whose primary nighttime residence is:
 - i. a supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation;
 - ii. an institution that provides a temporary residence for individuals intended to be institutionalized;
 - iii. a temporary accommodation of not more than 365 days in the residence of another individual; or
 - iv. a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Incentive Items/Incentives—any goods or services provided as inducements to shop in a grocery store or recruit customers.

Infant Formula—a food that meets the definition of an infant formula in section 201 of the Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 321(z)), as amended, and that meets the requirements for an infant formula under section 412 of the Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 350a), as amended, and the regulations at 21 CFR parts 106 and 107.

Institution—any residential accommodation which provides meal service, except private residences and homeless facilities.

Infants—persons under 1 year of age.

Judicial Review—the procedure by which a vendor may appeal a decision rendered at an administrative review, or a participant may appeal a decision rendered at a fair hearing.

Local Agency—a public or private, nonprofit or human service agency which provides health services, either directly or through contract, in accordance with 7 CFR §246.5.

Maximum Allowable Reimbursement Level (MARL)—the highest reimbursement amount for each FI for each peer group that the state agency may pay. The state agency determines a MARL for every WIC FI. Any FI that is submitted with a price higher than MARL shall be reduced through the automated clearing house (ACH) process.

Migrant Farmworker—an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode.

Non-A50 Vendors—see *regular vendors (non-A50)*.

Nonprofit Agency—a private agency which is exempt from federal income tax under the *Internal Revenue Code of 1954*, (title 26 of the U.S.C.), as amended.

Nutrition Education—individual and group sessions and the provision of materials that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

Nutritional Risk—

- a. detrimental abnormal nutritional conditions detectable by biochemical or anthropometric measurements;
- b. other documented nutritionally related medical conditions;
- c. dietary deficiencies that impair or endanger health;
- d. conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or
- e. conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

Other Harmful Substances—other substances such as tobacco, prescription drugs and over-the-counter medications that can be harmful to the health of the WIC population, especially the pregnant woman and her fetus.

Participant Access—the ability of a WIC participant to adequately access WIC-approved foods through the state agency's selection and authorization of an appropriate number and distribution of vendors consistent with ensuring effective state agency management, oversight, and review of its authorized vendors. The state agency has established participant access criteria in accordance with WIC regulations at 7 CFR part 246.

Participant Violation—any intentional or unintentional action of a participant, caregiver or a proxy that violates federal or state statutes, regulations, policies or procedures governing the program.

Participants—pregnant women, breastfeeding women, postpartum women, infants and children up to their fifth birthday who are currently enrolled in the WIC program and

are receiving supplemental foods under the program, and the breastfed infants of participant breastfeeding women.

Participation—the sum of the number of:

- a. persons who received supplemental foods or food instruments during the reporting period;
- b. infants who did not receive supplemental foods or food instruments but whose breastfeeding mother received supplemental foods or food instruments during the report period; and
- c. breastfeeding women who did not receive supplemental foods or food instruments but whose infant received supplemental foods or food instruments during the report period.

Peer Group—a group of vendors that is based on common characteristics or criteria that affect food prices. Vendors are grouped for management and cost containment purposes including, but not limited to, establishing and applying appropriate competitive price criteria (CPC) and MARLs to vendors.

Postpartum Women—usually, women up to six months after termination of pregnancy; however, this term shall also be apply to breastfeeding women up one year after termination of pregnancy.

Pregnant Women—women determined to have one or more embryos or fetuses *in utero*.

Price Adjustment—an adjustment made by the state agency, in accordance with the vendor agreement, to the purchase price on a food instrument after it has been submitted by a vendor for redemption. Price adjustments are made to ensure that the payment to the vendor for the food instrument complies with the state agency's price limitations.

Program—WIC (unless the context in which this word is used in this Subpart clearly indicates otherwise).

Proxy—any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact FIs and CVVs and/ or to obtain WIC-approved foods on behalf of a participant. The proxy shall be designated consistent with the state agency's procedures established pursuant to 7 CFR §246.12(r)(1). Parents or caretakers applying on behalf of child and infant participants are not proxies.

Regular Vendors (Non-A50)—vendors that do not meet the above-50-percent (A50) vendor's criterion, as defined elsewhere in this Subsection.

Reimbursement—the payment received by vendors after completing the routine process of depositing an FI or CVV into the banking system and the payment that may be received through the procedure an authorized vendor may use to request payment from the state agency when an FI or CVV has been refused by the bank or state agency. The state agency only reimburses vendors up to the applicable maximum allowable reimbursement level (MARL) for valid FIs and CVVs.

Sanctions—actions taken by the state agency when an authorized vendor fails to comply with WIC program rules, regulations, policies and/or procedures. Actions include, but are not limited to, CAPs, training requirements, termination of agreements, disqualifications or civil money penalties (CMPs), and fines.

Secretary—the secretary of the United States Department of Agriculture.

Sign or Signature—a handwritten signature on paper or an electronic signature. If the state agency chooses to use electronic signatures, the state agency shall ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, and applicable Federal law and policy, and the confidentiality provisions at 7 CFR §246.26.

State—the state of Louisiana.

State Agency—the state of Louisiana, Louisiana Department of Health, Office of Public Health, Center for Community and Preventive Health.

State Plan—a plan of program operation and administration that describes the manner in which the state agency intends to implement and operate all aspects of program administration within its jurisdiction in accordance with 7 CFR §246.4.

Supplemental Foods—those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants, and children, and foods that promote the health of the population served by the WIC program as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the secretary in 7 CFR §246.10.

Supplemental Nutrition Assistance Program (SNAP)—the program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), in which eligible households receive benefits that can be used to purchase food items from authorized retail stores and farmers' markets (formerly known as the Food Stamp Program).

Termination—the ending of a vendor agreement by the state agency for administrative reasons.

USDA—the United States Department of Agriculture.

Vendor—a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and shall be authorized separately from other stores operated by the business entity. Each store shall have a single, fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the state agency's state plan in accordance with 7 CFR §246.4(a)(14)(xiv).

Vendor Agreement—a document that is a legally binding agreement between an authorized vendor and the WIC program.

Vendor Authorization—the process by which the state agency assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be authorized as vendors.

Vendor Limiting Criteria—criteria established by the state agency to determine the maximum number and distribution of vendors it authorizes pursuant to 7 CFR §246.12(g)(2).

Vendor Number—a distinctive five digit number assigned to each authorized vendor.

Vendor Overcharge—any intentional or unintentional charge for supplemental foods to the state agency for more than is permitted under the vendor agreement. It is not a

vendor overcharge when a vendor submits a food instrument for redemption in accordance with the vendor agreement and the state agency makes a price adjustment to the food instrument.

Vendor Portal—a web-based application maintained by the state agency that serves as the primary point of contact for all Louisiana vendors and contains the WIC vendor price reporting system.

Vendor Selection Criteria—the criteria established by the state agency to select individual vendors for authorization consistent with the requirements in 7 CFR §246.12(g)(3) and (g)(4) and found in §4503 of this Subpart.

Vendor Violation—any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or federal or state statutes, regulations, policies, or procedures governing the program.

WIC—WIC program.

WIC-Approved Foods (Authorized Supplemental Foods)—those supplemental foods authorized by the state agency for issuance to participants.

WIC Program—the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health Office of Public Health, LR 14:868 (December 1988), amended by the Department of Health, Office of Public Health, LR 43:

Chapter 43. Participant Eligibility

§4301. Integration with Health Services

A. To lend administrative efficiency and participant convenience to the certification process, whenever possible, program intake procedures shall be combined with intake procedures for other health programs or services administered by the state and local agencies. Such merging may include verification procedures, certification interviews, and income computations. Local agencies shall maintain and make available for distribution to all pregnant, postpartum, and breastfeeding women, and to parents or caretakers of infants and children, any of whom are applying for and participating in the program, a list of local counseling and treatment resources for drug and other harmful substance abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4303. Eligibility Criteria

A. To be certified as eligible for the WIC program, applicants shall:

1. reside within the jurisdiction of the state, however, length of residency is not an eligibility requirement;
2. meet the income requirement as described in Subsection B of this Section; and

3. meet nutritional risk criteria as described in Subparagraph d (priority IV) of Paragraph 3 of Subsection C of this Section and in the state plan.

B. Income Criteria and Income Eligibility Determination

1. Income criteria for the program is established at 185 percent of poverty level (U.S. Department of Health and Human Services) as issued annually by the Louisiana Department of Health, Office of Public Health, Bureau of Nutrition Services. This shall have an effective date of no later than July 1 annually.

2. The state agency shall ensure that WIC clinics and local agencies determine income through the use of a clear and simple application form provided or approved by the state agency. Routine verification of income and/or a random selection to verify participant income is at the discretion of the state agency. Documentation of an applicant's participation in other agency-administered programs which routinely verify income, such as Medicaid, Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) may be accepted provided those programs have income guidelines at or below the WIC program guidelines.

C. Nutritional Risk. A competent professional authority shall determine if a participant is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data by an applicant or participant's medical provider.

1. Determination of Nutritional Risk. At a minimum, height or length and weight of the participant shall be measured, and a hematological test for anemia such as a hemoglobin, hematocrit or free erythrocyte protoporphyrin test shall be performed. However, such tests are not required for infants under 9 months of age.

2. Appropriate nutritional risk codes, as specified in the state plan and as summarized in Paragraph 3 of this Subsection, shall be documented at each certification/recertification visit.

3. Nutritional Risk Priority System. The state agency shall, in the event that statewide participation has reached the maximum level, fill vacancies according to the federally mandated priority system. In the event a priority level must be partially closed, subpriorities are described in the state plan as approved by USDA. Priority levels are identified as follows.

a. Priority I consists of pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for supplemental foods.

b. Priority II consists of (except those infants who qualify for Priority I) infant up to 6 months of age born of women who participated in the program during pregnancy, and infants up to 6 months of age born of women who were not program participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrated the person's need for supplemental foods.

c. Priority III consists of children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

d. Priority IV consists of pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

e. Priority V consists of children at nutritional risk because of an inadequate dietary pattern.

f. Priority VI consists of postpartum women at nutritional risk.

g. Priority VII consists of individuals certified for WIC solely due to homelessness or migrancy and, at state agency option, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health Office of Public Health, LR 14:868 (December 1988), amended by the Department of Health, Office of Public Health, LR 43:

§4305. Timeframes for Processing Applicants

A. When the WIC clinic or local agency is not serving its maximum caseload, the local agency shall accept applications, make eligibility determinations, notify the applicants of the decisions made and, if the applicants are to be enrolled, issue food, cash-value vouchers or food instruments. All of these actions shall be accomplished within the timeframes set forth below.

1. The processing timeframes shall begin when the individual visits the local agency during clinic office hours to make an oral or written request for benefits.

2. Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for program benefits; except that state agencies may provide an extension of the notification period to a maximum of 15 days for those local agencies which make written request, including a justification of the need for an extension. The state agency shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as priority I participants, and migrant farm workers and their family members who soon plan to leave the jurisdiction of the local agency.

3. All other applicants shall be notified of their eligibility or ineligibility within 20 days of the first date of the request for program benefits.

4. Each WIC clinic or local agency using a retail purchase system shall issue a food instrument(s) and if applicable a cash-value voucher(s) to the participant at the same time as notification of certification. Such food instrument(s) and cash-value voucher(s) shall provide benefits for the current month or the remaining portion thereof and shall be redeemable immediately upon receipt by the participant. Local agencies may mail the initial food instrument(s) and, if applicable, cash-value voucher(s) with the notification of certification to those participants who meet the criteria for the receipt of food instruments through the mail, as provided in 7 CFR §246.12(r)(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4307. Certification Periods

A. Program benefits shall be based upon certifications established in accordance with the following timeframes.

1. Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

2. Postpartum women shall be certified for up to six months postpartum.

3. Breastfeeding women shall be certified at intervals of approximately six months and ending with the breastfed infant's first birthday.

4. Infants shall be certified up until their first birthday.

5. Children shall be certified at intervals of approximately six months and ending with the end of the month in which a child reaches its fifth birthday.

B. Upon request, participants shall receive verification of certification when transferring to another WIC program out of state.

C. If the nutritional risk determination is based on data taken before the time of entrance into the program, the certification period for breastfeeding women and children shall be based upon the date when the data was first taken.

D. Participants receiving program benefits may be disqualified during a certification period for the following reasons.

1. Participant violation including, but not limited to, intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging CVVs, FIs, or WIC-approved foods for cash, credit, non-food items, or unauthorized food items, including WIC-approved foods in excess of those listed on the participant's FI; threatening to harm or physically harming vendor staff; or making a written, electronic, or verbal offer to sell WIC benefits, including WIC-approved foods, FIs, CVVs, and/or EBT cards, or allowing someone else to do so.

2. If the state agency experiences funding shortages, it may be necessary to discontinue program benefits to a number of certified and participating participants. The state agency shall not enroll new participants during the period when currently participating participants, those who have received benefits during a current certification, are denied remaining benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4309. Participant Rights and

Responsibilities/Notification/Fair Hearing

A. Participant Rights and Responsibilities. All applicants shall read or have read to them the programs' rights and responsibilities statement, including the restriction of dual participation in the program or between the program and CSFP. After reviewing the statement, all applicants shall sign attesting to have reviewed the statement.

B. Notification of Ineligibility. Participants found ineligible during a certification period shall be advised in writing of the ineligibility, the reasons for the ineligibility and of the right to a fair hearing.

C. Notification of Disqualification. Participants who are about to be disqualified from program participation during a certification period shall be advised in writing not less than 15 days before the effective date of disqualification, of the reasons for the disqualification and the right to a fair hearing.

D. Fair Hearing Procedures for Participants. The state agency provides a hearing procedure through which any individual may appeal, within 60 days of the date of notification by the state agency, an action which results in the denial of participation or the disqualification from the program.

1. The hearing process is governed by the procedures set forth in the Administrative Procedure Act, R.S. 49:950 et seq., and as mandated by federal regulations, 7 CFR part 246.

2. The state agency shall not summarily deny or dismiss an appeal unless:

a. the request is withdrawn in writing by the appellant or legal representative of the appellant;

b. the appellant or legal representative fails, without good cause, to appear at the scheduled hearing; or

c. the appellant has been denied participation by a previous decision following a hearing and does not allege in the request for appeal that circumstances relevant to program eligibility have changed in such a way as to justify a new hearing.

3. The state agency shall continue program benefits for a participant whose participation has been terminated during a certification period if a request for an appeal is received within the 15 days advance notification of disqualification. Benefits shall continue until the hearing officer reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive benefits while pending the hearing and decision of the hearing officer.

4. A participant or representative may appeal the fair hearing decision through judicial review as provided for in the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

Chapter 45. Vendor Selection, Participation and Sanctions

§4501. Reserved.

§4503. Vendor Selection Criteria

A. As outlined in the *Federal Register*, 7 CFR part 246, the state agency has the responsibility to maximize the use of available funds by providing supplemental foods to participants at the most reasonable prices and to have an agreement with enough vendors to ensure adequate participant access. The state agency reserves the right to implement limiting criteria on vendors statewide by peer

group in order to meet this responsibility. If the state agency elects to implement such limiting criteria, the criteria shall be made available to all vendors and applied equally to all vendors within peer groups.

B. Vendor Selection Criteria. In order to be eligible to participate in the Louisiana WIC program, the applicant vendor and/or authorized vendors shall:

1. submit a complete and notarized application, including any required supporting documentation, to the WIC state agency within applicable timeframes set by the WIC state agency;

2. be currently authorized and participating in the USDA Supplemental Nutrition Assistance Program (SNAP) and cannot have received a SNAP civil money penalty (CMP) for which the disqualification period, if it had been imposed, would not yet have expired;

3. have a grocery class permit to operate issued under the Bureau of Sanitarian Services of the Office of Public Health for the current state fiscal year;

4. maintain the establishment in a clean, orderly and safe condition, with no current sanctions for violations of the Louisiana state *Sanitary Code* (LAC 51), the *International Plumbing Code* as amended by the Louisiana State Uniform Construction Code Council (LAC 17:I.111), or local health code ordinances;

5. be open a minimum of 6 days, and at least 48 hours, per week;

6. have prices that are competitive with other vendors in the vendor's state agency designated peer group, as determined by the state agency's competitive price criteria (CPC). Applying vendors, whose prices are higher than the CPC applicable to their peer groups, shall be informed and given one opportunity to lower their prices to meet the CPC;

7. display prices for WIC-approved foods on the foods or on the shelves/display area in immediate proximity to the foods;

8. stock and maintain sufficient quantities and varieties of all WIC-approved foods in accordance with Louisiana WIC's minimum stock requirements, which can be found in the minimum stock requirements section of the vendor guide;

9. purchase infant formula only from vendors included on Louisiana WIC's list of infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, and licensed infant formula wholesalers, distributors, and retailers. This list can be found at <http://new.dhh.louisiana.gov/index.cfm/newsroom/detail/2328>;

10. not have been denied WIC authorization or had a prior WIC authorization terminated by the state agency within the past year for any reason other than the expiration of the vendor agreement, store closing, or store relocation;

11. ensure that the vendor, vendor applicant or any of the vendor's or vendor applicant's current owners, officers, or managers shall not have been formerly employed by any vendor that was disqualified from any USDA food program within the prior six years;

12. ensure that the vendor, vendor applicant or any of the vendor's or vendor applicant's current owners, officers, or managers shall not have been convicted of any felony within the prior six years;

13. ensure that the vendor, vendor applicant or any of the vendor's or vendor applicant's current owners, officers, or managers shall not have been convicted of any federal, state or local tax violations within the prior six years;

14. ensure that the vendor, vendor applicant or any of the vendor's or vendor applicant's current owners, officers, or managers shall not have a civil judgment entered against them within the prior six years for any activity indicating a lack of business integrity (including but not limited to fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice);

15. be in good standing with no unpaid or overdue balances owed to the Louisiana WIC program;

16. not have had any WIC vendor agreement terminated due to false or inaccurate information provided to the WIC program within the past six years;

17. have access to a computer, with internet access, and shall have an e-mail account that can be used to send messages to and receive messages from the Louisiana WIC program, and shall be able to download and upload electronic documents sent/received via email or posted/requested on the vendor portal or any other online application used by the WIC program;

18. utilize a cash register system that performs split tender transactions and produces itemized receipts showing date of purchase, items purchased, price of items purchased, and the total sale amount, at a minimum;

19. redeem or expect to redeem at least 50 WIC FIs per month;

20. agree to be placed in a vendor peer group with other above-50-percent vendors when deriving or expecting to derive more than 50 percent of their annual food sales revenue from WIC FI transactions. Vendors within this peer group shall maintain WIC-approved food prices at a level such that the average payments per FI for above-50-percent vendors does not exceed average payments per FI to regular vendors;

21. agree to neither provide nor advertise nor indicate an intent to provide customers with any incentive items, when deriving or expecting to derive more than 50 percent of their annual food sales revenue from WIC FI transactions. The state agency shall make a determination on what constitutes a violation of the intent of the previous sentence; however, incentive items definitively prohibited include, but are not necessary limited to:

a. services which result in a conflict of interest or the appearance of such conflict for the above-50-percent vendor, such as assistance with applying for WIC benefits;

b. lottery tickets at no charge or below face value;

c. cash gifts in any amount for any reason;

d. anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

e. food, merchandise or services of any value provided to the customer;

f. food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

g. any kind of incentive item which incurs a liability for the WIC program; and

h. any kind of incentive item which violates any federal, state, or local law or regulations;

22. not derive or expect to derive more than 50 percent of annual food sales revenue from WIC FI transactions; and

23. be a full-line grocery store, as defined by the state agency. The Louisiana WIC definition of a *full-line grocery store* can be found in §4103 of this Subpart.

C. After authorization, all WIC vendors shall continue to meet the criteria of this Section, and any changes thereto, at all times. A WIC vendor found to be out of compliance with the WIC regulations, vendor agreement, or WIC vendor selection criteria, at any time during the authorization period is subject to termination of the WIC authorization and vendor agreement and possible disqualification. Disqualification from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP) and such SNAP disqualification is not subject to administrative or judicial review under the SNAP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4505. Agreement

A. The authorized vendor shall sign and agree to the conditions enumerated and/or referenced in the WIC vendor application and vendor agreement.

B. The authorized vendor shall accept state agency adjustments to WIC FI and CVV claims for reimbursement. The state agency may make adjustments to ensure that payments to the authorized vendor do not exceed the maximum allowable reimbursement level for the vendor's assigned peer group.

C. No request for reimbursement submitted by the vendor shall be paid by the state agency unless the claim is in accordance with the terms of the vendor agreement.

D. Unauthorized vendors that accept FIs or CVVs may be held liable for repayment of any funds received.

E. Terms of Agreement. An agreement shall be for a period not exceeding three years. The agreement is null and void if ownership changes. Neither party has an obligation to renew the agreement. Fifteen days written notice shall be given prior to the expiration of an agreement. Expiration of an agreement is not subject to appeal.

F. Termination of Agreement. The agreement may be terminated by 15-days written notice to the other party or by the mutual agreement to terminate of both parties. The 15-days written notice does not apply when the state agency terminates the agreement or disqualifies a vendor as a result of violation(s) of the terms of the agreement.

1. The state agency shall terminate an authorized vendor agreement for failure of the vendor to meet the selection criteria found in §4503.B of this Subpart

2. The state agency shall immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization. Violations of the WIC program regulations shall result in termination of the agreement, disqualification, and/or possible referral for criminal prosecution.

G. A vendor may be subject to announced and unannounced monitoring visits and inventory audits by

authorized personnel to determine compliance with the vendor agreement and/or federal or state rules, regulations or policy governing the WIC program.

H. WIC vendors agree to provide any records requested by authorized parties pursuant to their vendor agreement by established due dates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4507. Reimbursement of Altered or Bank Rejected Food Instruments or Cash-Value Vouchers

A. If a vendor has a FI or CVV that has been rejected or has had the payment amount adjusted by the Louisiana WIC contracted bank and the vendor feels that the rejection or adjustment was made in error, the vendor may request reimbursement from the state agency.

B. The vendor shall submit to the state agency, in a format specified by the state agency, any bank rejected FIs or CVVs within 60 days from the last day of the valid period. Any FIs or CVVs submitted thereafter shall not be considered.

C. In determining whether or not to reimburse vendors for FI(s) or CVV(s) rejected by the bank due to errors on the vendors' part, the state agency may consider the following criteria in making its determination:

1. the prior record of the same repeated errors;
2. the vendor's reported food costs versus the amount requested for reimbursement; and
3. the level of documented inventory on hand.

D. Vendors shall be notified of adverse reimbursement decisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4509. Vendor Sanctions for Violations

A. Federal Mandatory Vendor Sanctions

1. The state agency shall permanently disqualify a vendor convicted of trafficking in food instruments (FIs) or cash value vouchers (CVVs) or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act of 1970 (21 U.S.C. 802), as amended) in exchange for FIs or CVVs.

2. The state agency shall disqualify a vendor for six years for:

- a. one incidence of buying or selling a WIC FI or CVV for cash (trafficking); or
- b. one incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended, in exchange for a WIC FI or CVV.

3. The state agency shall disqualify a vendor for three years for:

- a. one incidence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for a WIC FI or CVV;
- b. a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item that

exceeds the store's documented inventory of that supplemental food item for a specific period of time;

c. a pattern of vendor overcharges;

d. a pattern of receiving, transacting and/or redeeming FIs or CVVs outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

e. a pattern of charging for supplemental foods not received by the participant; or

f. a pattern of providing credit or non-food items (not including alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended) in exchange for FIs or CVVs.

4. The state agency shall disqualify a vendor for one year for if:

a. a pattern of providing unauthorized food items in exchange for FIs or CVVs, including charging for supplemental foods provided in excess of those listed on the FI; or

b. a pattern of an above-50-percent vendor providing prohibited incentive items to participants as set forth in federal regulations at 7 CFR 246.12(g)(3)(iv).

B. Second Federal Mandatory Vendor Sanction. When a vendor that has previously been assessed a sanction for any of the federal mandatory vendor sanctions and then receives a second sanction for any of the federal mandatory vendor sanctions, the state agency shall double the second sanction. The total amount assessed in civil money penalties (CMPs) for a second sanction may not exceed the maximum limits allowed under federal regulations.

C. Third or Subsequent Federal Mandatory Vendor Sanction. When a vendor who previously has been assessed two or more sanctions for any of the federal mandatory vendor sanctions and then receives another sanction for any of the federal mandatory vendor sanctions, the state agency shall double the third sanction and all subsequent sanctions. The state agency may not impose a civil money penalty (CMP) in lieu of disqualification for third or subsequent sanctions for federal mandatory vendor sanctions.

D. State Agency Vendor Sanctions. The state agency identifies violations contained in Paragraphs 1 through 7 and 9 of this Subsection as actions subject to a corrective action plan for an initial violation. Corrective action plans shall be implemented in full by vendors when required by the state agency and can include, but are not limited to, store employee training, stock rotation training, and/or training on WIC FI/CVV processing procedures. If the vendor fails to implement a corrective action plan for failure to adhere to selection criteria, the state agency shall terminate the vendor agreement. The state agency may disqualify a vendor from participation in WIC for one year for a pattern of any of the following state agency violations:

1. providing cash for returned WIC-approved foods purchased with WIC FIs/CVVs;

2. failing to comply with FI and CVV processing and redemption procedures;

3. stocking or selling WIC-approved foods that are expired or otherwise not fresh, as determined by the state agency;

4. failing to participate in and complete training, as scheduled and required by the state

agency;

5. failing to maintain or provide the state agency with required information by the due date identified by the state agency;

6. failing to notify the state agency of instances in which a participant or proxy has failed to comply with WIC program requirements;

7. failing to provide to WIC participants or proxies the same courtesies as offered to other customers;

8. failing to implement a corrective action plan imposed by the state agency; or

9. failing to adhere to any other requirements of the vendor agreement or vendor guide except those for which a longer disqualification period is required as specifically identified within Subsection A-A.2.f of this Section.

E. Civil Money Penalty. Except where prohibited by federal regulation or in those cases of permanent vendor disqualification pursuant to the application of Subsection A of this Section, if the state agency determines in its sole discretion that disqualification of the authorized vendor would result in inadequate participant access, the state agency shall impose a civil money penalty (CMP) in lieu of disqualification. Such CMP shall be calculated in accordance with federal regulations. If a vendor does not pay the CMP, only partially pays the CMP, or fails to make timely payment of the CMP in lieu of disqualification, the state agency shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed.

F. Recoupment of Excess Payment. The state agency shall recoup excess payments made to the authorized vendor resulting from the vendor's violation of the vendor agreement.

G. SNAP Disqualification. The state agency shall disqualify from the WIC program a vendor who is disqualified from SNAP. The disqualification shall be for the same length of time as SNAP disqualification, may begin at a later date than SNAP disqualification, and is not subject to administrative or judicial review under the WIC program.

H. SNAP CMP. The state agency shall disqualify a vendor who receives a CMP for hardship by SNAP. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in SNAP.

I. Mandatory Sanction by another WIC State Agency. The state agency shall disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a federal mandatory vendor sanction under the provisions of Subsection A.1-A.4.b of this Section. The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

J. Voluntary Withdrawal not Accepted. Voluntary withdrawal of a vendor and non-renewal of the vendor agreement as alternatives to WIC disqualifications shall not

be accepted, and the disqualification shall be entered on the record.

K. Comprehensive Inclusion of Violations of Vendor Document Requirements (including the WIC vendor guide and the WIC vendor agreement which is not covered elsewhere in this Section). Vendor sanctions for violations of vendor document requirements (including the WIC vendor guide and the WIC vendor agreement not covered elsewhere in this Section) may result in termination or disqualification, following provision to the vendor of reasonable notice and opportunity to correct, where permitted by WIC regulations. Violations may give rise to the state agency's assessment of vendor claims, fines, and penalties. Termination of the vendor agreement does not relieve the vendor of the obligation to pay such assessments.

L. State Agency Actions. The state agency shall determine the action to be taken whenever vendor fraud, abuse, or administrative violations are discovered. If the state agency determines that the vendor has violated WIC rules or regulations, the vendor may be required to develop and submit a corrective action plan, the vendor agreement may be terminated and/or the vendor may be disqualified from participation in the WIC program for a period of time no more than the maximum period of time allowed under federal regulations at 7 CFR part 246. To obtain reauthorization, vendors who are disqualified or whose vendor agreement has been terminated shall reapply and meet all current requirements for authorization.

M. Vendor Notification. The state agency shall notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the state agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation. Notification shall not be provided for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds documented inventory.

N. Effect on Other Stores under Same Ownership. If an individual, partnership, corporation, limited liability company, or other business structure is convicted of a criminal offense involving WIC, SNAP, or any other program funded and administered by the Food and Nutrition Service of the U.S. Department of Agriculture, all grocery stores wholly or partially owned or managed by the convicted individual, partnership, corporation, limited liability company, other business structure, or by a partner of a convicted partnership or an officer, of a convicted corporation or a convicted limited liability company, shall be terminated from vendor authorization and shall be ineligible for future vendor authorization for the maximum period of time allowed by federal law and regulations. This termination and period of ineligibility shall occur whether or not the grocery store was the location at which the crime occurred, and regardless of whether or not a penalty was imposed upon the convicted party by the court of competent jurisdiction.

O. Legal Remedies Not Precluded by Sanction. The state agency sanctions for vendor violations or program abuse shall not be construed as excluding or replacing any criminal or civil sanctions or other remedies that may be applicable

under any federal or state statute or local ordinance. A vendor who commits fraud or abuse of the program is liable to prosecution under applicable federal, state or local laws. Those vendors who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than 5 years or both, if the value of the funds is \$100 or more. If the value of the funds is less than \$100, such vendors shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

P. Prosecution Referral. The state agency shall, where appropriate, refer vendors who abuse the program to federal, state and/or local authorities for prosecution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4511. Administrative Review of State Agency Adverse Actions

A. Adverse actions taken by the Louisiana WIC program that affect vendors or vendor applicants may be subject to administrative review, if appealed.

B. The Louisiana WIC program shall provide written notification of the adverse action, the procedures to follow to request an administrative review, and the cause(s) for and the effective date of the action. If the vendor is disqualified due in whole or in part to violations of §4509.A of this Subpart, such notification shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP." If the WIC authorized vendor or applicant vendor wishes to appeal the decision, the vendor or applicant vendor shall submit a request for appeal stating the reason for the appeal. The request shall be submitted in writing and mailed to the Louisiana WIC program within 15 calendar days after the receipt of the state agency's written notification of the adverse action. Within the notice of adverse action, the Louisiana WIC program shall include an appropriate return mailing address, along with a staff member's contact name, so that an aggrieved party may properly submit a request for appeal.

C. The adverse action shall be imposed on the effective date noted in the written notification and shall remain in place during the administrative review unless the Louisiana WIC program determines, at its sole discretion, that the adverse action would result in inadequate participant access to supplemental foods.

D. Adverse actions subject to administrative review include the following:

1. denial of authorization based on the application of the vendor selection criteria for minimum variety and quantity of approved foods;
2. denial of authorization based on a determination that the vendor is attempting to circumvent a sanction;
3. termination of an agreement for cause;
4. disqualification, except as a result of a disqualification from SNAP;
5. imposition of a fine or a civil money penalty in lieu of disqualification;

6. denial of authorization based on the vendor selection criteria for business integrity;

7. denial of authorization based on the selection criteria for a current SNAP disqualification or civil money penalty for hardship;

8. denial of authorization based on the application of the vendor selection criteria for competitive price;

9. the application of the state agency's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;

10. denial of authorization based on a state agency-established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a SNAP withdrawal of authorization or disqualification;

11. denial of authorization based on the state agency's limiting criteria, if any;

12. denial of authorization because a vendor submitted its application outside the time frames during which applications are being accepted and processed, as established by the state agency;

13. termination of an agreement because of a change in ownership or location or cessation of operations;

14. a civil money penalty imposed in lieu of disqualification based on a SNAP disqualification; and

15. denial of an application based on a determination of whether an applicant vendor is currently authorized by SNAP.

E. A WIC authorized vendor or vendor applicant who files a proper appeal request for those actions subject to administrative review shall be provided:

1. adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review and at least one opportunity to reschedule the administrative review date upon specific request;

2. the opportunity to examine, prior to the review, the evidence upon which the Louisiana WIC program's action is based;

3. the opportunity to be represented by counsel;

4. the opportunity to cross-examine adverse witnesses (when necessary to protect the identity of witnesses, they may be cross-examined behind a protective screen or other device);

5. the opportunity to present its case;

6. an impartial decision-maker, whose determination is based solely on whether the Louisiana WIC program has correctly applied federal and state statutes, regulations, policies, and procedures governing the program, according to the evidence presented at the review; and

7. written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of a vendor's request for an administrative review; however, this timeframe is only an administrative goal for the Louisiana WIC program and, should a decision of the appeal review not be made within the specified time frame, such delay shall not provide a basis to overturn the adverse action.

F. Actions not subject to administrative review include:

1. the validity or appropriateness of the Louisiana vendor limiting criteria, if any;

2. the validity or appropriateness of Louisiana's vendor selection criteria for the minimum variety and quantity of supplemental foods, business integrity, current SNAP disqualification, or civil money penalty for hardship;

3. the validity or appropriateness of the Louisiana selection criteria for a competitive price including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;

4. the validity or appropriateness of the state agency's participant access criteria and the state agency's participant access determinations;

5. the state agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of businesses from which an authorized vendor may purchase infant formula pursuant to selection criteria;

6. the validity or appropriateness of the state agency's prohibition of incentive items and the state agency's denial of an above-50-percent vendor's request to provide an incentive item to customers;

7. the state agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

8. the state agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;

9. denial of authorization if the state agency's vendor authorization is subject to the procurement procedures applicable to the state agency;

10. the expiration of a vendor's agreement;

11. disputes regarding food instrument or cash-value voucher payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error); and

12. disqualification of a vendor as a result of disqualification from SNAP.

G. A vendor that is permitted to continue program operations while its appeal is in process does not relieve such vendor from the responsibility of continued compliance with the terms of any written agreement with the Louisiana WIC program. Administrative review decisions of the Division of Administrative Law are the final action of the Louisiana WIC program. If the review decision upholds the adverse action against the vendor, the vendor may be able to pursue judicial review of the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

§4513. Availability of Documents

A. The vendor application, the vendor agreement, and the WIC vendor guide shall be provided for review to any interested party by submission of an e-mail request to LAWICVendor@la.gov.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:

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, amendment or repeal. All Family 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 the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No, this proposed Rule should not affect the stability of the family.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No, this proposed Rule has no effect on parents' living children.

3. Will the proposed Rule affect the functioning of the family? No, the proposed Rule will not affect the functioning of the family.

4. Will the proposed Rule affect family earnings and family budget? No, the proposed Rule will not affect family earnings and family budget.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No, the proposed Rule will not affect the behavior and personal responsibility of children.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? If applicable, the family and local government will be able to perform the function as contained in the proposed Rule.

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 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, the proposed Rule will not affect the household income, assets, or financial security.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No, the proposed Rule will not affect early childhood development or preschool through postsecondary education development.

3. Will the proposed Rule affect employment and workforce development? No, the proposed Rule will not affect employment or workforce development.

4. Will the proposed Rule affect taxes and tax credits? No, the proposed Rule will not affect taxes or tax credits.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No, the proposed Rule will not affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

In accordance with the Regulatory Flexibility Act (R.S. 49:965.2-965.8), the impact of the proposed Rule on small businesses as defined in the RFA 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 the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on the:

1. staffing level requirements or qualifications required to provide the same level of service;
2. total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. 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., December 27, 2016, to Bruce Boyea, Director, Bureau of Nutrition Services, Office of Public Health, 1450 Poydras Street, Suite 1906, New Orleans, LA 70112, or faxed to (504) 568-8232. He is responsible for responding to inquiries regarding this proposed Rule.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amends Subpart 15 [Supplemental Food Services for Women, Infants, and Children (WIC)] of Part V (Preventive Health Services) of Title 48 (Public Health-General) of the Louisiana Administrative Code (LAC). This proposed rule ensures that the state remains in compliance with applicable federal regulations of the United States Department of Agriculture (USDA), adds definitions, and corrects obsolete and typographical references. The following sections will be amended: Sections 4101 and 4103 of Chapter 41 – General Provisions; Sections 4301, 4303, 4305, 4307 and 4309 of Chapter 43 – Participant Eligibility and Certification; and Sections 4503, 4505, 4507, 4509, 4511 and 4513 of Chapter 45 – Vendor Selection, Participation and Sanctions.

In Chapter 41, Sections 4101 adds information to the purpose and scope regarding the implementation of federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC program) within the state and its relationship to the Supplemental Nutrition Assistance Program (SNAP). Section 4103 proposes new, updates, and clarifies definitions.

In Chapter 43, the title of the section is amended. Section 4301 amends language to improve and streamline the certification and program intake procedures to increase

program efficiency and participant convenience. Section 4303 sets forth eligibility criteria for applicants to participate in the WIC program including such things as residency, income, and nutritional risk determination. Section 4305 describes the timeframes for processing applications, eligibility status, and issuance of the food instrument. Section 4307 describes the certification periods for infants, children, and women who are pregnant, postpartum, or breastfeeding. Section 4309 amends participants rights and responsibilities as well as notice of ineligibility, disqualification and procedures for a fair hearing.

In Chapter 45, Section 4503 describes the vendor selection criteria. Section 4505 amends information regarding the WIC vendor agreement including provisions for signing the agreement and accepting certain provisions with regard to the food instruction and claims for reimbursement. Section 4507 amends reimbursement of altered or bank rejected food instruments or cash-value vouchers. Section 4509 amends vendor sanctions for federal violations and the ensuing state responsibilities for remediation. Section 4511 changes to the administrative review of the state agency adverse actions. Section 4513 amends how interested parties can request access to review the vendor application, vendor agreement, and the WIC vendor guide.

The proposed rule is not anticipated to result in any implementation costs to the Office of Public Health (OPH) or local governmental units. The proposed rule changes is estimated to cost \$1,500 to publish the notice of intent and final rule in the Louisiana Register. The OPH has sufficient funds in its annual operating budget to implement the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated effects on revenue collections of local governmental units anticipated as a result of promulgating the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not result in an economic cost to vendors nor participants who are currently enrolled in the WIC program the LDH OPH. As of November 9, 2016, there are 510 vendors enrolled to serve an average of 126,000 participants per month. However, vendors are anticipated to benefit from program efficiencies implemented in the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment anticipated as a result of these proposed rule changes.

Beth Scalco
Assistant Secretary
1611#053

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 107—Homeowners and Fire/Commercial
Insurance Policy Disclosure Forms
(LAC 37:XII.Chapter 153)

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. 22:1319, and R.S. 22:1332, notice is hereby given that the Department of Insurance proposes to adopt Regulation 107. The purpose of this regulation is to promulgate the

Homeowner and Fire/Commercial Insurance Policy Disclosure forms developed by the Commissioner of Insurance for use by all property and casualty insurers issuing, delivering or renewing homeowner and fire/commercial insurance policies that provide coverage for damages to property in Louisiana.

The full text of this proposed Rule can be viewed in the Emergency Rule section of this *Louisiana Register*.

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 Analysis

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 107. Such comments must be received no later than December 20, 2016 by close of business, 4:30 p.m., and addressed to Lance C. Joseph, 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: Homeowners and Fire/Commercial Insurance Policy Disclosure Forms

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule (Regulation 107) will not result in costs or savings to the Department of Insurance or any other state or local government units. The proposed rule promulgates provisions related to the Homeowners and Fire/Commercial Insurance Policy Disclosure Forms developed by the Commissioner of Insurance. These forms will be used by all property and casualty insurers issuing, delivering, or renewing homeowners and fire/commercial insurance policies that

provide coverage for damages to property in Louisiana. Appendix C of Regulation 107 includes the implementation of ACT 274 of the 2016 Louisiana Legislative Regular Session, which includes a deductible disclosure for Homeowners Insurance policy coverage.

The proposed rule implements procedures where any claim that does not exceed the policy deductible and that does not result in a claim payment to the policyholder may be used to increase the cost of the policyholder's premium in the future or as part of the basis for cancellation of their policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule (Regulation 107) 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 (Regulation 107) may have a cost to policyholders. The proposed regulation promulgates Homeowners and Fire/Commercial Insurance Policy Disclosure Forms. In the event claims do not exceed the policy deductible, the proposed Regulation 107 may increase consumer premiums or may result in policy cancellation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule (Regulation 107) will have no impact upon competition and employment in the state.

Denise Brignac
Deputy Commissioner
1611#075

Greg V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 76—Privacy of Consumer (LAC 37:XIII.9901 and 9913)

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 76 – Privacy of Consumer.

The purpose of amending Regulation 76 is to comply with the passage of the Fixing America's Surface Transportation ("FAST") Act, which was passed by the United States Congress and signed into law (Public Law 114-94; December 4, 2015). The FAST Act amended the Gramm-Leach-Bliley Act to provide an exemption from the annual privacy notice requirements required under Gramm-Leach-Bliley. As Regulation 76 mirrors the duties and responsibilities of those in the business of insurance with regards to the privacy of insurance consumer's information, any amendments to Gramm-Leach-Bliley that were passed into law should likewise be incorporated as an amendment to Regulation 76. The FAST Act amendment serves the purpose, in both federal law and the proposed Regulation 76 amendment here, to relieve those in the business of insurance to whom it applies from duplicative privacy notice requirements, while at the same time continuing to preserve the privacy rights of insurance consumers.

The full text of this proposed Rule can be viewed in the Emergency Rule section of this *Louisiana Register*.

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 Analysis

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 76 until 5 p.m., December 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 76—Privacy of Consumer**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in costs or savings to the Department of Insurance or any other state or local governmental units. The proposed rule change amends Regulation 76 in order to comply with the Fixing America’s Surface Transportation (FAST) Act, which was passed by the United States Congress and signed into law December 4, 2015. Under current state rules, licensees (licensed insurers or producers) are required to provide notice to individuals about its privacy policies and to disclose the conditions where a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties.

The proposed rule change will continue to preserve the privacy rights of insurance consumers while complying with the FAST Act amendment by relieving insurance licensees from annual privacy notice requirements when the licensee has not changed its policies and practices that were disclosed in their most recent disclosure to consumers.

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 is not anticipated to have any costs to consumers. The proposed rule change continues to preserve the privacy rights of insurance consumers.

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
1611#076

Greg V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Financial Security for the Plug and Abandonment of Oil and Gas Wells and Determinations of Future Utility (LAC 43:XIX.104)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43: XIX.Subpart 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment is made to implement the provisions of Act 634 of the 2016 Regular Session of the Louisiana Legislature. The Amendments will reduce the per foot cost of financial security for inland wells below 3000 feet to \$2.00 per foot and exempt wells orphaned by the commissioner and subsequently transferred to another operator from financial security requirements.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation – General Operations
Subpart 1. Statewide Order No. 29-B**

Chapter 1. General Provisions

§104. Financial Security

A. - B.4. ...

C. Financial Security Amount

1. Land Location

a. Individual well financial security shall be provided in accordance with the following.

Measured Depth	Amount
< 3000'	\$2 per foot
3001-10000'	\$5 per foot
> 10001'	\$4 per foot

C.1.b. - H. ...

I. Financial security shall not be required for the following wells:

1. any well declared to be orphaned by the commissioner and subsequently transferred to another

operator, except as required by Act 583 of the 2016 Regular Session;

2. any well to be drilled by an operator who has an agreement with the office of conservation to plug a well that has been declared to be orphaned by the commissioner and that orphaned well is similar to the proposed well in terms of depth and location;

3. the provisions hereof shall not alter or affect the requirements for inactive wells given in LAC 43:XIX.137.A.

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:4, et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation LR 26:1306 (June 2000), amended LR 27:1917 (November 2001), 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.

Small Business Analysis

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Public Comments

All interested 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 p.m., December 12, 2016, at 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. R A 2016-02. All inquiries should be directed to John Adams at the above addresses or by phone to (225) 342-7889. No preamble was prepared.

Richard P. Ieyoub
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Financial Security for the Plug and Abandonment of Oil and Gas Wells and Determinations of Future Utility

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no implementation costs to the state or local governmental units. The proposed rule change will reduce the per foot cost of financial security for inland wells shallower than 3,000 feet from \$7.00 to \$2.00 per foot and exempt wells orphaned by the commissioner and subsequently transferred to another operator from financial security requirements. The reduction in the per-foot cost is a result of Act 634 of the 2016 Regular Legislative Session, which set the rate at \$2.00 per foot. The previous rate of \$7.00 per foot was codified into rule. There are no costs to the Office of Conservation since the financial security will be able to be documented using existing documentation and staff.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state and local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The group directly affected by the rule change will be certain Exploration and Production (E&P) companies that do not possess blanket financial security. These companies will need to provide smaller amounts of financial security if a new well is permitted or if an existing well is transferred and the well is drilled shallower than 3,000 feet and they choose to obtain financial security on a per footage basis. Additionally, wells orphaned by the commissioner and subsequently transferred to another operator will be exempted from financial security requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Richard P. Ieyoub
Commissioner
1611#045

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development Professional Engineering and Land Surveying Board

Graduates with Advanced Engineering Degrees and
Preliminary Work Disclaimers (LAC 46:LXI.901 and 2701)

Under the authority of the Louisiana professional engineering and land surveying licensure law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has initiated procedures to amend its rules contained in LAC 46:LXI.901 and 2701.

This is a technical revision of existing rules under which LAPELS operates. The revision adds to the rule on the requirements for certification as an engineer intern through an advanced engineering degree a cross reference to the rule on acceptable engineering graduate programs and clarifies and expands the rule on the use of preliminary work disclaimers.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXI. Professional Engineers and Land Surveyors Chapter 9. Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering or Land Surveying

§901. Engineer Intern Certification

A. The requirements for certification as an engineer intern under the several alternatives provided in the licensure law are as follows.

1. ...

2. Graduates with Advanced Engineering Degree. The applicant shall be a graduate of a non-EAC/ABET accredited

engineering or related science or engineering technology curriculum of four years or more approved by the board as being of satisfactory standing, who has obtained an engineering graduate degree in an engineering discipline or sub-discipline from a university having an undergraduate accredited engineering curriculum in the same discipline or sub-discipline, approved by the board as being of satisfactory standing and in accordance with §1105, who is of good character and reputation, who has passed the examination required by the board in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

A.3. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1027 (July 2001), LR 30:1711(August 2004), LR 32:1618 (September 2006), LR 37:2412 (August 2011), LR 38:2563 (October 2012), LR 43:

Chapter 27. Use of Seals

§2701. Seal and Signature

A. The following rules for the use of seals to identify work performed by a professional engineer or professional land surveyor shall be binding on every licensee.

1. - 3.b.iii.(c). ...

4. Seal Use

a. - a.v.(b). ...

b. Preliminary Work

i. All preliminary documents shall be marked in large bold letters with one or more of the following statements:

- (a). "Preliminary—Not For Construction";
- (b). "Preliminary—For Permit Purposes Only";
- (c). "Preliminary—For Review Only"; or
- (d). "Preliminary—Not For Recordation, Conveyances or Sales".

ii. Preliminary documents are not required to have the licensee's seal, signature and date affixed, but must bear the name and license number of the licensee, and the name of the licensee's firm, if applicable.

4.c. - 5.b. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:696.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 8:192 (April 1982), amended LR 12:692 (October 1986), LR 16:774 (September 1990), LR 17:273 (March 1991), LR 19:58 (January 1993), LR

22:287 (April 1996), LR 23:869 (July 1997), amended by the Louisiana Legislature, House Concurrent Resolution Number 2 of the 1998 First Extraordinary Session, LR 24:1207 (June 1998), repromulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 25:1525 (August 1999), amended LR 27:1039 (July 2001), LR 30:1723 (August 2004), LR 33:2789 (December 2007), LR 34:2415 (November 2008), LR 35:1910 (September 2009), LR 38:1418 (June 2012), LR 39:1481 (June 2013), LR 42:443 (March 2016), 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 *Louisiana Register*: The proposed Rule has no known impact on family formation, stability or autonomy.

Poverty Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(ix) and 973, the following Poverty Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*: The proposed Rule has no known impact on child, individual or family poverty in relation to individual or community asset development.

Provider Impact Statement

In accordance with HCR No. 170 of the 2014 Regular Session, the following Provider Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*: The proposed Rule has no known effect on the staffing level requirements or qualifications required to provide the same level of service, the cost to the provider to provide the same level of service or the ability of the provider to provide the same level of service.

Public Comments

Interested parties are invited to submit written comments on the proposed Rule through December 12, 2016 at 4:30 p.m., to Donna D. Sentell, Executive Director, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433.

Donna D. Sentell
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Graduates with Advanced Engineering Degrees and Preliminary Work Disclaimers

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 resulting from this proposed rule change. The proposed rule change adds a cross reference on acceptable engineering graduate programs to the rule regarding requirements for certification as an engineer intern through an advanced engineering degree. It also clarifies and expands the rule detailing the use of preliminary work disclaimers.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no 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)

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment in the public and private sectors is anticipated.

Donna Sentell
Executive Director
1611#041

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Committee Reports

COMMITTEE REPORT

House of Representatives Insurance Committee

House Committee Report Upon Unacceptable Determination—Regulation 106 Replacement of Limited Benefit Insurance Policies (LAC 37:XIII.Chapter 149)

Editor's Note: This Notice of Intent can be viewed in the August 20, 2016 edition of the Louisiana Register on pages 1430-1433.

October 31, 2016

Pursuant to the provisions of R.S. 49:968, the House of Representatives Insurance Committee met on October 31, 2016, to review proposed Regulation Number 106, Replacement of Limited Benefit Insurance Policies, submitted by the Department of Insurance.

There was lengthy testimony and discussion of the proposed regulation. The testimony and discussion focused

primarily on the burdens the proposed regulation placed on both insurance producers and insurance companies, particularly the limited period of time for producers and insurers to provide the required notice and replacement policy to the insured to comply with the regulation. The committee also found that the information required by the proposed regulation to be provided to consumers is likely to confuse consumers and needs to be made more consumer-friendly.

In sum, the committee found that proposed Regulation 106 created too many regulatory burdens for both insurance producers and insurance companies and needed modification. The committee voted without objection to deem proposed Regulation Number 106, Replacement of Limited Benefit Insurance Policies, unacceptable.

Attached is a copy of proposed Regulation 106, Replacement of Limited Benefit Insurance Policies, submitted by the Department of Insurance.

Representative Kirk Talbot
Chairman

1611#033

Potpourri

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

Notice of Public Hearing—Substantive Changes to Proposed Rule AQ364—Work Practice Standards during Start-up and Shutdown (LAC 33:III.2201)(AQ364S)

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 LAC 33:III.2201.C, I, and K (AQ364S), which were originally noticed as AQ364 in the June 20, 2016, *Louisiana Register*. (1611Pot1)

The department has made the following substantive changes to address comments received on AQ364:

1. the report required by LAC 33:III.2201.I.2 should: address noncompliance with applicable work practice standards under LAC 33:III.2201.K.3;
2. set the effective date of the work practice standards as May 1, 2017;
3. require the department to incorporate into the applicable permit, for each affected facility, appropriate requirements describing the source-specific conditions or parameters identifying when operation of control devices, such as selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR), must commence;
4. clarify that the records required by LAC 33:III.2201.K.3.e and f must be maintained for at least five years; and
5. require the owner or operator of an affected facility to notify the department whether each affected point source will comply with numerical emission limitations or work practice standards during periods of start-up and shutdown.

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. The department is also providing an interim response to comments received on the initial regulation proposal.

A strikeout, underline, and 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 at www.deq.louisiana.gov under Rules and Regulations.

Public Comments

All persons submitting written comments should reference the proposed regulation as AQ364S. Comments must be received no later than December 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, fax (225) 219-4068, or e-mail at deidra.johnson@la.gov. The comment period for the substantive changes ends on December 28, 2016. Copies of these substantive changes may be purchased by

contacting the LDEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ364S. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing on the substantive changes will be held on December 28, 2016, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and make 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.

AQ364S is available for inspection at the following LDEQ 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; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
General Counsel

1611#029

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

State Implementation Plan for Regional Haze Program Electrical Generating Units BART

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Services, Air Permits Division, will submit a proposed revision to the state implementation plan (SIP) for the Regional Haze Program as required under the Clean Air Act, Part C, section 169, and 40 CFR Part 51.308. Regional haze is visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area. (1611Pot2)

On July 3, 2012, the Environmental Protection Agency (EPA) made final a partial limited approval and partial disapproval of the original SIP submitted on June 13, 2008. This revision answers the requirements for the electrical generating units (EGUs) at the Entergy Gulf States Louisiana, Roy S. Nelson facility, located in Westlake, Calcasieu Parish, Louisiana and the Entergy Louisiana LLC, Waterford 1 and 2 Generating Plant, St. Charles Parish, LA that were addressed under the best available retrofit

technology (BART) section and that is subject to the EPA partial disapproval.

All interested persons are invited to submit written comments concerning the SIP revision no later than 4:30 p.m., Wednesday December 30, 2016, to Vivian H. Aucoin, Office of Environmental Services, P.O. Box 4313, Baton Rouge, LA 70821-4314, fax (225) 219-3482, or e-mail at vivian.aucoin@la.gov. A public hearing will be held upon request. The deadline for requesting a public hearing is Friday, December 2, 2016.

A copy of the proposal may be viewed on the LDEQ website or at LDEQ headquarters at 602 North Fifth Street, Baton Rouge, LA 70802.

Herman Robinson
General Counsel

1611#030

POTPOURRI
Department of Health
Board of Veterinary Medicine

Examination Dates; Board Meetings and Nominations

Spring/Summer Examination Dates

The Louisiana Board of Veterinary Medicine will administer the state board examination (SBE) for licensure to practice veterinary medicine on the first Tuesday of every month. Deadline to apply for the SBE is the third Friday prior to the examination date desired. SBE dates are subject to change due to office closure (i.e. holiday, weather).

The board will accept applications to take the North American veterinary licensing examination (NAVLE) which will be administered through the National Board of Veterinary Medical Examiners (NBVME), formerly the National Board Examination Committee (NBEC), as follows.

Test Window Date	Deadline To Apply
April 10 through April 22, 2017	February 1, 2017

The board will also accept applications for the veterinary technician national examination (VTNE) for state registration of veterinary technicians which will be administered through the American Association of Veterinary State Boards (AAVSB), as follows.

Test Date	Deadline To Apply
March 15 through April 15, 2017	February 15, 2017
July 15 through August 15, 2017	June 15, 2017
November 15 through December 15, 2017	October 15, 2017

Applications for all examinations must be received on or before the deadline. No late application will be accepted. Requests for special accommodations must be made as early as possible for review and acceptance. Applications and information may be obtained from the board office at 301 Main Street, Suite 1050, Baton Rouge, LA 70801, via

telephone at (225) 342-2176, and by e-mail at admin@lsbvm.org; application forms and information are also available on the website at www.lsbvm.org.

Board Meeting Dates

The members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2017:

- Thursday, February 3, 2017
- Thursday, April 6, 2017
- Thursday, June 1, 2017 (Annual Meeting)
- Thursday, August 3, 2017
- Thursday, October 5, 2017
- Thursday, December 7, 2017

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at admin@lsbvm.org to verify actual meeting dates.

Board Nominations

The Louisiana Board of Veterinary Medicine announces that nominations for the position of board member will be taken by the Louisiana Veterinary Medical Association (LVMA) at the annual winter meeting to be held in late January 2017. Interested persons should submit the names of nominees directly to the LVMA as per R.S. 37:1515. It is not necessary to be a member of the LVMA to be nominated. The LVMA may be contacted at (225) 928-5862.

Wendy D. Parrish
Executive Director

1611#006

POTPOURRI
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Public Hearing—Substantive Changes to Proposed Rule
Cervid Carcass Importation (LAC XIX.V.119)

The Wildlife and Fisheries Commission published a Notice of Intent to promulgate regulations for the Cervid carcass importation ban in the July 20, 2016 edition of the *Louisiana Register*. The notice solicited views, arguments, information, written comments and testimony. As a result of its consideration of the written comments and testimony received, the Wildlife and Fisheries Commission proposes to amend the proposed Rule so that, as amended, will read as set forth below.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§119. Cervid Carcass Importation

A. Definitions

Cervid—any animal of the family *Cervidae* including, but not limited to, white-tailed deer, mule deer, elk, moose, caribou, fallow deer, axis deer, sika deer, red deer, and reindeer.

B. No person shall import, transport or possess any cervid carcass or part of a cervid carcass originating outside of Louisiana, except: for meat that is cut and wrapped; meat

that has been boned out; quarters or other portions of meat with no part of the spinal column or head attached, antlers, clean skull plates with antlers, cleaned skulls without tissue attached, capes, tanned hides, finished taxidermy mounts and cleaned cervid teeth. Any and all bones shall be disposed of in a manner where its final destination is at an approved landfill or equivalent. Said rule shall be effective March 1, 2017.

C. Approved parts or deboned meat transported from other states must be legally possessed from the state it was taken. Approved parts and deboned meat from other states must contain a possession tag with the hunter's name, out-of-state license number (if required), address, species, date and location (county and state) of harvest. All cervids transported into or through this state in violation of the provisions of this ban shall be seized and disposed of in accordance with Wildlife and Fisheries Commission and

Department of Wildlife and Fisheries rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 43:

Public Hearing

In accordance with R.S. 49:968(H)(2), a public hearing on proposed substantive changes will be held by the Wildlife and Fisheries Commission on Thursday, January 5, 2017, at 9:30 a.m. in the Louisiana Room at the Wildlife and Fisheries Headquarters Building located at 2000 Quail Drive, Baton Rouge, LA 70808.

Bart R. Yakupzack
Chairman

1611#018

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