

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Facility Need Review Exception Criteria for Bed Approvals (LAC 48:I.12533)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.12533 as authorized by R.S. 36:254 and 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:962, 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 hereby amends the provisions governing facility need review approvals of licensed and Medicaid certified facility beds in order to prevent the expiration of approvals for nursing facilities, intermediate care facilities for persons with developmental disabilities, and adult residential care providers with inactivated licenses as a result of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or 29:766.

This action is being taken to prevent imminent peril to the health, safety, and welfare of the public by ensuring that certain licensed and Medicaid facilities with inactivated licenses as a result of executive orders or proclamations of emergency or disaster, which have not resumed operational status within the two year inactivation period due to continued healthcare staffing shortages and supply chain issues, retain facility need review approvals for licensed and Medicaid certified beds. It is anticipated that implementation of this Emergency Rule will have no fiscal impact for state fiscal year 2022-2023.

Effective June 9, 2023, the Department of Health, Bureau of Health Services Financing amends the provisions governing facility need review approvals of licensed and Medicaid certified facility beds in order to prevent the expiration of approvals for nursing facilities, intermediate care facilities for persons with developmental disabilities, and adult residential care providers with inactivated licenses as a result of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or 29:766.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter F. Exception Criteria for Bed Approvals

§12533. Declared Disasters and Emergency Events

A. The facility need review bed approvals for a licensed and Medicaid certified nursing facility, ICF/DD, or for a licensed adult residential care provider (ARCP) located 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 shall remain in effect and shall not be terminated, revoked or considered to have expired for a period not to exceed two years for a nursing facility or ARCP, and one year for an ICF/DD, following the original date of such executive order or

proclamation, provided that the following conditions are met:

1. the nursing facility, ICF/DD, or ARCP shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the nursing facility, ICF/DD, or ARCP has experienced an interruption in the provision 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;

b. - c. ...

* * *

2. A nursing facility, ICF/DD, or ARCP resumes operating as a nursing facility, ICF/DD, or ARCP in the same service area, within two years for a nursing facility or ARCP and within one year for an ICF/DD, of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766; and

3. ...

B. For good cause shown, the department may, in its sole discretion, grant two extensions of six months each, for a total of 12 additional months, to a facility described in Subsection A of this Section, during which time the facility need review approvals shall remain in effect and not be terminated, revoked, or considered to have expired, provided that the following conditions are met:

1. A nursing facility, ICF/DD, or ARCP submits a written extension request to the department 30 days prior to the expiration of the original time period established in Subsection A or the expiration of the first extension granted under these provisions.

a. The written extension request shall include evidence of progress in re-opening, including construction and expenditures on the repairs to or replacement of the facility.

b. The written extension request shall include an estimated re-opening date for the facility.

2. The facility resumes operating as a nursing facility, ICF/DD, ARCP in the same service area, within the time period of the extension(s).

3. The facility continues to submit the required documentation and information to the department.

C. The provisions of this Section shall not apply to:

1. a nursing facility, ICF/DD, or ARCP which has voluntarily surrendered its facility need review bed approval; or

2. a nursing facility, ICF/DD, or ARCP which fails to resume operations as a nursing facility, ICF/DD, or ARCP in the same service area, within two years for a nursing facility or ARCP and within one year for an ICF/DD, or within the deadlines of any extensions granted thereto, of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766.

D. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the facility need review bed approvals.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2621 (December 2008), amended LR 35:2439 (November 2009), LR 39:1469 (June

2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Tasheka Dukes, RN, Health Standards Section, 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.

Stephen R. Russo, JD
Secretary

2306#035