

NOTICE OF INTENT

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

**Pediatric Day Health Care
Licensing Standards
(LAC 48:I.Chapter 52)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 52 as authorized by R.S. 36:254 and R.S. 40:2131-2141. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 619 of the 2022 Regular Session of the Louisiana Legislature requires pediatric day health care (PDHC) facilities licensed by the Department of Health to install and operate cameras at the licensed premises that record both audio and video and to develop and disseminate policies regarding the recordings. In compliance with Act 619, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of PDHC facilities in order to add requirements for the installation and operation of cameras at the licensed premises that record both audio and video. In addition, this proposed Rule establishes requirements for the inactivation of a PDHC facility's license due to non-declared emergencies.

Title 48

PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification

Chapter 52. Pediatric Day Health Care Facilities

Subchapter B. Licensing Procedures

§5205. General Provisions

A. - G. ...

H. The PDHC facility shall provide for the installation and operation of cameras that record both video and audio at its licensed premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2761 (December 2009); amended by the Department of Health, Bureau of Health Services Financing, LR 48:

§5213. Changes in Licensee Information or Personnel

A. - D.3. ...

E. Any request for a duplicate license must be accompanied by the appropriate fees.

F. - F.2. ...

G. A change of ownership of the PDHC facility shall not be submitted at the time of annual renewal of the PDHC facility's license.

AUTHORITY NOTE: Promulgated in accordance with R.S.
40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 35:2763
(December 2009); amended by the Department of Health, Bureau of
Health Services Financing, LR 48:

Subchapter C. Administration and Organization

§5233. Policy and Procedures

A. - E.5. ...

F. The director of the PDHC facility shall develop and
share with all facility employees and the parents or guardians
of children served at the facility a policy relative to cameras
that record both video and audio at the facility that, at
minimum, provides for all of the following:

1. the location and placement of cameras that record
both video and audio in any room in which children may be cared
for, except the interior of a restroom or any other area in
which a child's bare body is normally exposed;

2. a requirement that written notice of the cameras
that record both video and audio be provided to facility
employees, the parents or guardians of children served at the
facility, and authorized visitors;

3. a requirement that all employees who provide services at the facility receive training concerning the use of cameras that record both video and audio;

4. provisions relative to the duration of retention of video and audio data recorded by the devices required in §5205 and procedures for data storage and disposal;

5. procedures for protecting children's privacy and for determining to whom, and under what circumstances, video or audio data may be disclosed. Such policies shall restrict authorization to review video or audio data recorded by cameras at PDHC facilities to the following persons, exclusively:

- a. the director of the PDHC facility;
- b. the secretary of the department or his/her designee;
- c. the parents or guardians of a recorded child, pursuant to an allegation or evidence of abuse, neglect or injury;
- d. any member of law enforcement while investigating, in his official capacity, an allegation or evidence of abuse, neglect or injury; and
- e. any party designated in a subpoena issued by a court of law;

6. a requirement that any person who views a recording showing what he believes could be a violation of state

or federal law shall report the suspected violation to the appropriate law enforcement agency;

7. a requirement that any cameras that record both video and audio installed pursuant to §5205 be in compliance with the National Fire Protection Association *Life Safety Code*, as adopted by the Office of State Fire Marshal; and

8. a requirement that any video and audio recordings made by cameras at PDHC facilities, installed and operated in accordance with §5205, shall be kept confidential and are not public records; however, such a recording may be viewed by a party designated in Subsection F.5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2768 (December 2009); amended by the Department of Health, Bureau of Health Services Financing, LR 48:

Subchapter F. Facility Responsibilities

§5265. Staffing Requirements

A. - F.1.g. ...

2. Each direct care staff person employed by the facility shall have at least the following qualifications and experience:

a. - b. ...

c. be currently registered with the Certified Nurse Aide (CNA) Registry or Direct Service Worker (DSW) Registry as a CNA or DSW in good standing and without restrictions;

d. - e. ...

G. Nursing and Direct Care Staffing Levels

1. PDHC facilities shall have sufficient nursing and direct care staff to meet the needs of each infant and child receiving services in the PDHC facility in accordance with the plan of care.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2773 (December 2009); amended by the Department of Health, Bureau of Health Services Financing, LR 48:

Subchapter G. Safety and Emergency Preparedness

§5281. Emergency Preparedness

A. - J.5. ...

K. Inactivation of License due to Declared Disaster or Emergency

1. - 1.a.v. ...

b. the licensed PDHC facility resumes operating as a PDHC facility in the same service area within one year of the issuance of such an executive order or proclamation of emergency or disaster;

EXCEPTION: If the PDHC facility requires an extension of this timeframe due to circumstances beyond the PDHC facility's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show the PDHC facility's active efforts to complete construction or repairs and the reasons for request for extension of the PDHC facility's inactive license. Any approval for extension is at the sole discretion of the department.

1.c. - 2. ...

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a PDHC 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 PDHC facility shall submit a written license reinstatement request to the licensing agency of the department as soon as possible prior to the anticipated date of reopening;

b. ...

c. the license reinstatement request shall include a completed licensing application with approval from the Office of Public Health and the Office of State Fire Marshal; and

3.d. - 7. ...

L. Inactivation of Licensure due to a Non-Declared Disaster or Emergency

1. A PDHC 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 PDHC facility shall submit written notification to the Health Standards Section (HSS) within 30 days of the date of the non-declared emergency or disaster stating that:

i. the PDHC facility has experienced an interruption in the provision of services as a result of events that are due to a non-declared emergency or disaster;

ii. the facility intends to resume operation as a PDHC facility in the same service area;

iii. the PDHC facility attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

iv. the PDHC 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 PDHC 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 PDHC 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 PDHC facility's license, the department shall issue a notice of inactivation of license to the PDHC facility.

3. Upon receipt of the department's approval of request to inactivate the PDHC facility's license, the PDHC facility shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the facility, if applicable, to the OSFM and OPH as required.

4. The facility shall resume operating as a PDHC facility in the same service area within one year of the

approval of renovation/construction plans by the OSFM and the OPH as required.

EXCEPTION: If the PDHC facility requires an extension of this timeframe due to circumstances beyond the PDHC facility's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show the PDHC facility's active efforts to complete construction or repairs and the reasons for request for extension of the PDHC facility's inactive license. Any approval for extension is at the sole discretion of the department.

5. Upon completion of repairs, renovations, rebuilding or replacement of the PDHC facility which has received a notice of inactivation of its license from the department, the facility shall be allowed to reinstate its license upon the following conditions being met:

a. the PDHC 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, where applicable; and

c. the license reinstatement request shall include a completed licensing application.

6. Upon receiving a completed written request to reinstate a PDHC facility's license, the department may conduct a licensing or physical environment survey. The department may issue a notice of reinstatement if the PDHC facility has met the requirements for licensure including the requirements of this Subsection.

7. No change of ownership (CHOW) of the PDHC facility shall occur until such PDHC facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a PDHC facility.

8. The provisions of this Subsection shall not apply to a PDHC 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 PDHC facility's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2777 (December 2009); amended by the Department of Health, Bureau of Health Services Financing, LR 48:

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 facilitating transparency and ability to monitor delivery of services.

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.

Small Business Impact Statement

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule may have an adverse impact on small businesses, as described the Act if the requirements of these licensing changes increases the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has

determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may increase direct or indirect cost to the provider to provide the same level of service due to the costs of installation and maintenance of the cameras. 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 costs adversely impacts the provider's financial standing.

Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 27, 2022 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 10, 2022. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pediatric Day Health Care

Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL 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 22-23. It is anticipated that \$1,404 will be expended in FY 21-22 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 since the licensing fees, in the same amounts, will continue to be collected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

In compliance with Act 619 of the 2022 Regular Session of the Louisiana Legislature, the proposed rule amends the provisions governing the licensing of pediatric day health care (PDHC) facilities in order to add requirements for the

installation and operation of cameras at the licensed premises that record both audio and video. In addition, this proposed rule establishes requirements for the inactivation of a PDHC facility's license due to non-declared emergencies. The proposed rule will be beneficial to children served and their families by providing transparency and the ability to monitor the delivery of services. It is anticipated that implementation of this proposed rule will result in indeterminable costs to PDHC providers and small businesses in FY 22-23, FY 23-24, and FY 24-25, for installation and maintenance of the cameras.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.