

NOTICE OF INTENT

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

**Adult Residential Care Providers
Licensing Standards
(LAC 48:Chapter 68)**

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions of LAC 48:I.Chapter 68 as authorized by R.S. 36:254 and R.S. 40:2166.1-2166.8. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 112 of the 2022 Regular Session of the Louisiana Legislature revised the definitions and requirements for medication administration for adult residential care facilities. Act 531 of the 2022 Regular Session of the Louisiana Legislature removed facility need review (FNR) from the licensure requirements for adult residential care providers (ARCPs). In compliance with Acts 112 and 531, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of ARCPs in order to update the definitions and requirements for medication administration, and to remove the FNR requirement.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 68. Adult Residential Care Providers

Subchapter A. General Provisions

§6803. Definitions and Abbreviations

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the resident's health, moral or emotional well-being is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment that results in or that could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act that produced or that could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

Activities of Daily Living—ambulating, transferring, grooming, bathing, dressing, eating, toileting, and for the purposes of this Chapter, taking medication.

Facility Need Review (FNR)—Repealed.

Level 3 ARCP—an ARCP that provides adult residential care for compensation to 17 or more residents who are unrelated to the licensee or operator in independent apartments equipped with kitchenettes, whether functional or rendered nonfunctional for reasons of safety. Kitchenettes are not required in apartments designated for the specialized dementia care program.

NOTE: Repealed.

Level 4 ARCP—an ARCP that provides adult residential care including intermittent nursing services for compensation to 17 or more residents who are unrelated to the licensee or operator in independent apartments equipped with kitchenettes, whether functional or rendered nonfunctional for reasons of safety. Kitchenettes are not required in apartments designated for the specialized dementia care program.

NOTE: Repealed.

Licensed Nurse—a licensed registered nurse (RN) or a licensed practical nurse (LPN) who is acting within the scope of practice of his/her respective licensing board(s) and/or certifications.

Licensed Practical Nurse (LPN)—a person who practices practical nursing and who is licensed to practice practical nursing in accordance with R.S. 37:961, or current law.

Medication Attendant Certified (MAC)—a person certified by

LDH to administer medications to licensed long-term care facility residents. A MAC shall be directly employed by or contracted with an approved ARCP for staff administration of medications.

Medication Error-the observed or identified preparation or administration of medications or biologicals that is not in accordance with:

1. the prescriber's order(s);
 2. manufacturer's specifications regarding the preparation and administration of the medication or biological;
- or
3. accepted professional standards and principles that apply to professionals providing services. Accepted professional standards and principles include any state practice regulations and current commonly accepted health standards established by national organizations, boards, and councils.

Medication Error Rate-determined by calculating the percentage of medication errors observed during a medication administration observation. The numerator in the ratio is the total number of errors that the HSS survey team observes, both significant and non-significant. The denominator consists of the total number of observations, or opportunities for errors, and includes all the doses the HSS survey team observed being administered plus the doses ordered but not administered. The

equation for calculating a medication error rate is as follows:
medication error rate equals number of errors observed divided
by the opportunities for errors times 100.

Registered Nurse (RN)—an individual licensed and/or certified in accordance with R.S. 37:911 et seq., or current law to engage in the practice of nursing as defined in R.S. 37:913, or current law.

Self-Medication—residents can maintain possession and control of their medications.

Significant Medication Error—one which causes the resident discomfort or jeopardizes health or safety. The significance of medication errors is a matter of professional judgement. A significant medication error shall be determined based on the resident's condition, drug category, and frequency of error.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40:1101.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1086 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1976 (October 2017), LR 47:1497 (October 2021), LR 49:

§6807. Initial Licensure Application Process

A. An initial application for licensing as an ARCP shall be obtained from the department. A completed initial license application packet for an ARCP shall be submitted to and approved by the department prior to an applicant providing ARCP services. An applicant shall submit a completed initial licensing packet to the department, which shall include:

1. - 8.a. ...

NOTE: Repealed.

9. proof that the LDH/HSS is specifically identified as the certificate holder on any policies and any certificates of insurance issued as proof of insurance by the insurer or producer (agent);

10. if applicable, a clinical laboratory improvements (CLIA) certificate or a CLIA certificate of waiver;

11. a completed disclosure of ownership and control information form;

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

13. the days and hours of operation;

A.14. - B. ...

C. Once the initial licensing application packet has been approved by the department, the ARCP applicant shall notify the department of readiness for an initial licensing survey within

90 days. If an applicant fails to notify the department of readiness for an initial licensing survey within 90 days of approval, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ARCP must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1088 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 47:1497 (October 2021), LR 49:

§6809. Initial Licensing Surveys

A. - D. ...

1. The provider shall submit an acceptable plan of correction to LDH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The required components of a plan of correction shall:

a. ...

b. describe how other residents who have the potential to be affected by the deficient practice will be

identified, and what will be done for them;

D.1.c. - 2. ...

3. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or if new deficiencies are cited on the follow-up survey, 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 fee.

E. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1089 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 47:1498 (October 2021), LR 49:

§6813. Changes in Licensee Information or Personnel

A. - B.2.g. ...

C. A CHOW of the ARCP shall be reported in writing to the department within five business days of the relevant transaction. The license of an ARCP is not transferable or assignable; the license of an ARCP cannot be sold. The new owner shall submit the legal CHOW documents, all documents required for a new license, and the applicable licensing fee. Once all application requirements have been completed and approved by the

department, a new license shall be issued to the new owner.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1090 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 47:1498 (October 2021), LR 49:

Subchapter D. Adult Residential Care Provider Services

§6843. Medication Administration

A. - B. ...

C. Levels of Administration

1. Self-Administration. Unless otherwise indicated in the PCSP, residents shall have the option to self-administer their own medications. Residents who are appropriate for this service will be aware of what the medication is, what it is for and the need for the medication. The ARCP shall require the resident to undertake reasonable precautions to ensure the safety of other residents.

2. - 2.c.vii. ...

3. Staff Administration of Medication

a. ...

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 MACs.

c. - e.viii.(f). ...

f. Medication Errors

i. The ARCP shall ensure medication error rates are not five percent or greater and residents are free from any significant medication errors.

C.4. - F.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1098 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 47:1502 (October 2021), 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 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.

Small Business Analysis

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 will have a positive impact on small businesses since it removes facility need review as a requirement for licensure.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and 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 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 November 29, 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 November 9, 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 November 29, 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 November 9, 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: Adult Residential Care Providers

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 \$1,296 will be expended in FY 22-23 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 fees from currently licensed providers will continue to be collected in the same amounts.

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

In compliance with Acts 112 and 531 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the licensing of adult residential care

providers (ARCPs) in order to revise the definitions and requirements for medication administration in adult residential care facilities, and to remove facility need review (FNR) as a requirement for licensure. This proposed rule will be beneficial to recipients of ARCP services and providers by ensuring that legislative mandates regarding medication administration are incorporated into the administrative rule. Providers will also benefit from the removal of the requirement that an FNR must be conducted in order for certain ARCPs to be licensed. It is anticipated that implementation of this proposed rule will not result in costs to ARCPs for FY 22-23, FY 23-24, and FY 24-25, but will be beneficial for these providers by ensuring that the Louisiana Administrative Code aligns with current requirements for licensure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.