

NOTICE OF INTENT

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

**Health Care Facility Sanctions
(LAC 48:I.Chapter 46)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 46 as authorized by R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199, and 40:2199.1. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 461 of the 2022 Regular Session of the Louisiana Legislature requires the Department of Health to promulgate Rules for licensed healthcare facilities to establish duties and requirements addressing and preventing workplace violence. In compliance with Act 461, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing health care facility sanctions in order to establish duties and requirements addressing workplace violence and to add and update definitions.

Title 48

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Licensing and Certification

Chapter 46. Health Care Facility Sanctions

Subchapter A. General Provisions

§4601. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment and enforcement of statewide standards for the imposition of sanctions pursuant to state statutes against health care facilities in the state of Louisiana that have violations of federal or state law or statutes, licensure standards and requirements, certification requirements, or Medicaid requirements;

2. - 6. ...

B. This Chapter shall not apply to any individual health care provider who is licensed or certified by one of the boards under the LDH. These boards include, but are not limited to:

1. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3077 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4603. Definitions

Administrative Reconsideration—for purposes of this Chapter, also known as an informal reconsideration.

Class A Violation—a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a client or employee. Examples of class A violations include, but are not limited to:

1. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a client or employee; or

2. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a client or employee.

Class B Violation—a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created which results in the substantial probability of death or serious physical or mental harm to a client or employee. Examples of class B violations include, but are not limited to:

1. - 3. ...
4. failure to employ a sufficient number of adequately trained staff to care for clients;
5. failure to implement adequate infection control measures; or

6. failure to implement workplace violence prevention policies and procedures, resulting in death or serious physical or mental harm to an employee.

Class C Violation—a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client or the safety of an employee(s) through workplace violence. Examples of class C violations include, but are not limited to:

1. - 5. ...

6. lack of adequately trained staff necessary to meet a patient's or client's needs;

7. failure to have sufficient staff, including staffing patterns that may contribute to, or be insufficient to address, the risk of violence; or

8. failure to protect patients or clients from personal exploitation including, but not limited to, sexual conduct involving facility staff and a patient or client.

Class D Violation—a violation of a rule or regulation related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a client, or the safety of an employee(s) through workplace

violence. Examples of class D violations include, but are not limited to:

1. - 2. ...
3. falsification of a record;
4. failure to maintain a patient's or client's financial records as required by rules and regulations; or
5. failure to maintain and make available to its employees a written safety and security plan.

Department or LDH—the Louisiana Department of Health.

Employee—for purposes of this Chapter, a person who performs a job or task for the healthcare provider. An employed person may be permanent, temporary, contracted, or a volunteer.

Health Care Facility or Facility—any health care provider or entity licensed or certified by LDH. In other laws, statutes and regulations, this entity may be referred to as a provider, agency, clinic, residential unit, or home. A health care facility shall include, but not be limited to a/an:

1. - 11 ...
12. free-standing birth center;
13. supplier of portable x-ray services;
14. home and community-based services (HCBS) provider;

15. home health agency;
16. hospice agency;
17. hospital;
18. intermediate care facility for persons with developmental disabilities (ICF-DD);
19. mental health clinic;
20. mental health center;
21. mental health rehabilitation agency;
22. non-emergency medical transportation agency;
23. nursing facility;
24. nurse staffing agency;
25. rural health clinic;
26. pain management clinic;
27. pediatric day health care (PDHC) facility;
28. psychiatric rehabilitation treatment facility (PRTF);
29. substance abuse/addiction treatment facility;
30. therapeutic group home (TGH); and
31. any other program licensed or certified by LDH.

HSS—the LDH Health Standards Section.

Secretary—the secretary of LDH or his/her designee.

Work Place Violence—violent acts, including battery or the intentional placing of another person in reasonable apprehension

of sustaining battery, directed toward persons at work or on duty with their employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3077 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter B. Sanctions and Standards for the Imposition of Sanctions

§4611. General Provisions

A. - B.12.c. ...

C. Considerations. When determining whether to impose a sanction, the department may consider some or all of the following factors:

1. whether the violations pose an immediate threat to the health or safety of the client(s) or to the safety of an employee(s);

C.2. - E. ...

F. Any facility sanctioned under this Rule and found to have a violation that poses a threat to the health, safety, rights, or welfare of a client or the safety of an employee may have additional actions, such as criminal charges, brought against it under another applicable law, statute or regulation.

G. Unless otherwise provided for in state law or statute, if the secretary determines that the violations committed by the facility pose an imminent or immediate threat to the health, welfare or safety of any client or the safety of an employee, the imposition of the sanction may be immediate and may be enforced during the pendency of the administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3078 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4613. Civil Fines

A. - B. ...

C. Class C Violations

1. ...

2. A facility may elect to pay 50 percent of the civil fine imposed for a class C violation in exchange for waiving its right to an administrative reconsideration and appeal if it submits, and HSS receives, the following within 30 days of the facility's receipt of the civil fine notice:

a. ...

b. the facility's written waiver of the right to an administrative reconsideration and appeal on the form provided by LDH.

D. - E.1. ...

F. Determination of the Amount of Civil Fines

1. - 1.a.iii. ...

iv. the extent of actual or potential harm to clients or employees; and

1.b. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3079 (November 2013); amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4619. Removal from the Freedom of Choice List

A. The department may impose the sanction of removal from the freedom of choice list to a facility placed on a freedom of choice list. LDH may impose this sanction for any violation including, but not limited to:

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4621. Transfer of Clients Receiving Services

A. The department may impose the sanction of transfer of clients receiving services provided by a facility. This sanction may be imposed for any violation of statute, rule or regulation including but not limited to:

A.1. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4623. License Suspension

A. Unless otherwise provided by federal or state law, the department may impose a suspension of a license if the department determines that the violations committed by the facility pose an imminent or immediate threat to the health, welfare or safety of its clients or safety of its employees.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4627. Special Staffing Requirements

A. - B.5. ...

C. The department may impose the sanction of special staffing for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient, client, or employee;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient, client, or employee will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by

directly threatening the health, safety, rights, or welfare of a client or safety of an employee;

4. ...

5. when there is an imminent threat to the health, safety and welfare of the facility's clients or safety of employees.

D. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§4629. Temporary Management

A. The department may require the immediate appointment of a temporary manager, at the facility's expense, to:

1. ...

2. assure the health and safety of the facility's clients and safety of employees.

B. Temporary management may be imposed for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or

operation of a facility which results in death or serious harm to a resident, patient, client, or employee;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death, serious physical harm or mental harm to a resident, patient, client, or employee;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client or safety of an employee;

B.4. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3082 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter C. Notice and Appeals

§4643. Administrative Appeal Process

A. - C.5. ...

D. Hearings

1. ...

2. Evidence. The taking of evidence shall be controlled in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the issues shall be explained, and the order in which the evidence will be received shall be explained.

a. - b.v. ...

c. The administrative law judge (ALJ) may question any party or witness and may admit any relevant and material evidence.

2.d. - 7. ...

8. The ALJ does not have the authority to:

a. rescind or amend any violation of federal law, statute or regulation found by LDH on behalf of CMS; or

D.8.b. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3083 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

Subchapter D. Enforcement of Sanctions

§4651. Enforcement of Sanctions/Collection of Fines

A. - D.2. ...

E. The facility is prohibited from:

1. ...

2. increasing charges to clients as a result of civil fines and/or interest imposed by LDH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

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 may have an indeterminable impact on small businesses that fail to comply with the requirements for addressing workplace violence and may be sanctioned.

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 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 December 30, 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 December 12, 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 December 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 December 12, 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: Health Care Facility Sanctions

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 \$1,836 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)

The effect on revenue collections as a result of implementation of this proposed rule is indeterminable, because it is not possible to know how many health care facilities may fail to comply with the requirements for addressing workplace violence and the amount of any sanctions that may be imposed as a result of this non-compliance.

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

This proposed rule amends the provisions governing health care facility sanctions in order to establish duties and

requirements addressing workplace violence and to add and update definitions, in compliance with Act 461 of the 2022 Regular Session of the Louisiana Legislature. Employees of health care facilities will benefit from the protection against workplace violence resulting from this proposed rule. It is anticipated that implementation of this proposed rule may result in costs to health care facilities in FY 22-23, FY 23-24, and FY 24-25, if they are sanctioned due to non-compliance with the regulations; however, there is no way to determine the number of facilities that may be impacted nor the potential costs to them.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.