

**NOTICE OF INTENT**

**Department of Health  
Health Standards Section**

**Facility Need Review  
(LAC 48:I.Chapter 125)**

The Department of Health, Health Standards Section proposes to amend LAC 48:I.Chapter 125, as authorized by R.S. 36:254 and R.S. 40:2116 et seq. 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, Health Standards Section proposes to amend the provisions governing facility need review (FNR) in order to require residential substance abuse treatment providers, except those that provide services to women, adolescents, or both to be subject to FNR.

**Title 48**

**PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 5. Health Planning**

**Chapter 125. Facility Need Review**

**Subchapter A. General Provisions**

**§12501. Definitions**

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

\* \* \*

*Behavioral Health Services Provider (BHSP)*—a facility, agency, institution, person, society, corporation, partnership, unincorporated association, group, or other legal entity that provides behavioral health services or, presents itself to the public as a provider of behavioral health services. For the purposes of this Rule, FNR shall be applied to providers or applicants who elect to provide the following services:

1. psychosocial rehabilitation services;

2. community psychiatric support and treatment services;
3. residential substance abuse treatment services, except those that provide services to women, adolescents, or both; and/or
4. opioid treatment program services licensed under a BHSP license.

\* \* \*

*Residential Substance Abuse Treatment Services*—behavioral health services utilizing residential treatment programs as defined in Chapter 56, and provided in a residential setting. For the purposes of this Rule, FNR shall be applied to residential substance abuse treatment services, providers, programs, or beds except those that provide services to women, adolescents, or both.

\* \* \*

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

HISTORICAL NOTE: Promulgated Department of Health, Health Standards Section, LR 50:221 (February 2024), amended LR 50:984 (July 2024), LR 51:

**§12503. General Information**

A. - B.8.c. ...

C. The FNR committee will conduct an FNR to determine if there is a need for additional providers, facilities, or beds to be licensed by LDH and/or enrolled to participate in the Title XIX program for the following healthcare facility types, as defined under this Chapter:

1. - 4. ...

5. behavioral health services providers (BHSP) of psychosocial rehabilitation (PSR) services, community

psychiatric support and treatment (CPST) services, and residential substance abuse treatment services; and

C.6. - H.4. ...

I. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers of RC, PCA, SIL, or MIHC services, ICFs/DD, hospice providers, PDHC providers, or BHSPs that meet one of the following conditions:

1. - 6. ...

7. behavioral health services providers that are licensed to provide OTP services, or that have submitted a complete application for licensure as a BHSP that includes OTP services prior to January 1, 2024;

8. behavioral health services providers that fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, that submit a completed BHSP licensing application by December 1, 2017 and become licensed by April 1, 2018; or

9. behavioral health services providers that are licensed to provide residential substance abuse treatment, or that have submitted a complete application for licensure as a BHSP that includes residential substance abuse treatment services, prior to August 1, 2024.

J. - J.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health, Health Standards Section, LR 50:223 (February 2024), amended LR 50:985 (July 2024), amended LR 51:

**Subchapter B. Determination of Bed, Unit, Facility, or Agency Need**

**§12525. Behavioral Health Services Providers (PSR, CPST, and/or Residential Substance Abuse Treatment, Only)**

A. Except as otherwise provided in this Chapter, no BHSP or applicants seeking to provide psychosocial rehabilitation (PSR), community psychiatric support and treatment (CPST), and/or residential substance abuse treatment services shall be eligible to apply for licensure to provide PSR, CPST, and/or residential substance abuse treatment services unless the FNR committee has granted FNR approval for the issuance of a BHSP license for such services. Once the FNR approval is granted, a BHSP is eligible to apply for a BHSP license to provide PSR, CPST, and/or residential substance abuse treatment services.

B. - B.4. ...

\* \* \*

C. Determination of Need/Approval

1. The FNR committee shall review the FNR application to determine if there is a need for additional BHSPs to provide PSR, CPST, and/or residential substance abuse treatment services in the geographic service area.

2. The FNR committee shall approve the FNR application only if the data contained in the application and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access behavioral health PSR, CPST, and/or residential substance abuse treatment services if the provider is not allowed to be licensed.

3. In reviewing the application, the FNR committee may consider, but is not limited to, evidence showing:

a. the number of other BHSPs providing PSR, CPST, and/or residential substance abuse treatment services in the same geographic service area and servicing the same population;

b. the number of members that the BHSP is able to provide PSR, PST, and/or residential substance abuse treatment services to; and

c. allegations involving issues of access to behavioral health PSR, CPST, and/or residential substance abuse treatment services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access behavioral health PSR, CPST, and/or residential substance abuse treatment services if the provider is not granted approval to be licensed. The FNR committee shall not approve an FNR application if it fails to provide such data and evidence.

D. Applications for approvals of BHSPs of PSR, CPST, and/or residential substance abuse treatment services submitted under these provisions are bound to the description in the application with regard to the type of services proposed, as well as to the physical location and/or geographic service area as defined in the application. Facility need review approval of such providers shall expire if these aspects of the application are altered or changed.

E. Except as provided in the Subparagraphs below, FNR approvals for behavioral health PSR, CPST, and/or residential substance abuse treatment applicants are non-transferrable and are limited to the location and the name on the original license.

1. A BHSP of PSR, CPST, and/or residential substance abuse treatment services undergoing a change of physical location in the same licensed geographic service area shall submit a written attestation of the change of physical location, including the license number, state ID, current address and new address, and the department shall re-issue the FNR approval with

the name and new physical location. A BHSP undergoing a change of physical location outside of the licensed geographic service area shall submit a new completed FNR application and required fee and undergo the FNR approval process.

2. A BHSP of PSR, CPST, and/or residential substance abuse treatment services undergoing a change of ownership shall submit a new completed application and required fee to the department's FNR program, requesting a transfer of the FNR approval to the new owner. Facility need review approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, provided that the legal change of ownership documents require the seller's or transferor's written relinquishment of the FNR approval.

3. Facility need review approval of a licensed BHSP of PSR, CPST, and/or residential substance abuse treatment services shall automatically expire if the provider is moved or transferred to another party, entity, or physical location without application to and approval by the FNR program.

4. Facility need review approved BHSPs of PSR, CPST, and/or residential substance abuse treatment shall become licensed no later than one year from the date of the FNR approval. Failure to meet this timeframe shall result in an automatic expiration of the FNR approval of the BHSP.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Health Standards Section, LR 50:232 (February 2024), amended LR 51:

**Subchapter F. Exception Criteria for Facility Need Review Bed Approvals**

**§12549. Declared Disasters and Emergency Events**

A. The FNR approvals for a licensed and Medicaid certified NF, ICF/DD, ARCP, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, located in an area or areas that 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 NF or ARCP, and one year for an ICF/DD, a hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, following the original date of such executive order or proclamation, provided that the following conditions are met:

1. The NF, ICF/DD, ARCP, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or and HCBS provider of RC, PCA, SIL, or MIHC services, 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 NF, ICF/DD, ARCP, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, 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. the NF, ICF/DD, ARCP, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services or, an HCBS provider of RC, PCA, SIL, or MIHC services, intends to resume operation as a NF, ICF/DD, ARCP, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP

services, or an HCBS provider of RC, PCA, SIL, or MIHC services, in the same geographic service area;

i. if the ICF/DD was approved through a request for proposal (RFP), the ICF/DD shall conform to the requirements of the RFP as defined by the department;

c. - d. ...

2. An NF, ICF/DD, ARCP, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services resumes operating as an NF, ICF/DD, ARCP, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services in the same geographic service area, within two years for an NF or ARCP and within one year for an ICF/DD, a hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

3. The NF, ICF/DD, ARCP, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, continues to submit licensure required documentation and information to the department, as requested;

4. - 5. ...

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



1. A NF, ICF/DD, ARCP, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services submits a written extension request to the department 30 days prior to the expiration of the original time period established in Subsection A of this Section or the expiration of the first extension granted under these provisions.

a. - b. ...

2. The facility resumes operating as a NF, ICF/DD, ARCP, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services in the same geographic service area, within the time period of the extension(s).

3. ...

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

1. a NF, ICF/DD, ARCP, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services that has voluntarily surrendered its FNR bed approval; or

2. a NF, ICF/DD, ARCP, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services in the same service area, within two years for a NF or ARCP and within one year for an ICF/DD, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services 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. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Health Standards Section, LR 50:238 (February 2024), amended LR 51:

**§12551. Non-Declared or Other Emergency Events**

A. ...

B. The FNR approvals for a licensed and Medicaid certified NF, ARCP, ICF/DD, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services that is rendered unable to provide services to the public because of an emergency situation or disaster, including, but not limited to, fire, flood, tornado, or other condition that the provider is not primarily responsible, 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 NF and ARCP, and one year for an ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment and OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, following the date of such emergency situation or disaster, provided that the following conditions are met:

1. the NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment and OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services shall submit written notification to the HSS within 30 calendar days of the date of the emergency situation or disaster that:

a. the NF, ARCP, ICF/DD, hospice, PDHC, BHSP provider of CPST, PSR, residential substance abuse treatment or

OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services has experienced an interruption in the provisions of services as a result of conditions that are described in §12551.B;

b. the NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services intends to resume operation as a NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services in the same service area;

b.i. - c. ...

2. the NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services resumes operating in the same geographic service area, within two years for a NF or ARCP, and within one year for an ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services of the non-declared emergency or disaster; and

3. the NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services continues to submit the required documentation and information to the department, as requested.

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

1. a NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services that has voluntarily surrendered its FNR bed approval; or

2. a NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or

an HCBS provider of RC, PCA, SIL, or MIHC services that fails to resume operations in the same geographic service area, within two years for a NF or ARCP, and within one year for an ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services of the non-declared emergency or disaster.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Health Standards Section, LR 50:239 (February 2024), amended LR 51:

**§12553. Temporary Inactivation Due to Major Alterations**

A. A NF, ARCP, ICF/DD, hospice, PDHC, or BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services that is undergoing major alterations to its physical plant may request a temporary inactivation of a certain number of the facility's FNR bed approvals provided that:

1. the NF, ARCP, ICF/DD, hospice, PDHC, or BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services submits a written request to the licensing agency of the department seeking temporary inactivation of a certain number of its FNR bed approvals. Such written request shall include the following:

a. a statement that the NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services is undergoing major alterations to ensure or enhance the health, safety, and welfare of the residents;

b. a statement that the major alterations to the NF, ARCP, ICF/DD, hospice, PDHC, or BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services will cause a certain number of beds to be de-licensed and dis-enrolled;

c. - f. ...

2. upon receipt of a completed written request by a facility for temporary inactivation of FNR approvals for a NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, the department shall issue a notice of temporary inactivation of a certain number of the facility's FNR bed approvals;

3. ...

4. the FNR bed approvals capacity, after major alterations are completed, shall not exceed the FNR bed approvals capacity of the NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services at the time of the request to temporarily inactivate a certain number of its FNR bed approvals prior to the major alterations.

5. the provisions of this Subsection shall not apply to:

a. a NF, ARCP, ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services, that has voluntarily surrendered its license or has voluntarily dis-enrolled the facility's beds from Medicaid; or

b. a NF, ARCP, ICF/DD, hospice, PDHC, or BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services that fails to resume operations in the same geographic service

area, within two years for a NF or ARCP, and within one year for an ICF/DD, hospice, PDHC, BHSP of CPST, PSR, residential substance abuse treatment or OTP services, or an HCBS provider of RC, PCA, SIL, or MIHC services.

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health, Health Standards Section, LR 50:240 (February 2024), amended LR 50:988 (July 2024), LR 51:

#### **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 the direct or indirect cost to small businesses.

#### **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 have an indeterminable impact on the direct or indirect cost to the provider and 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 4, 2024.

#### **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 12, 2024. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on December 3, 2024 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 12, 2024. 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.

Michael Harrington, MBA, MA

Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Facility Need Review**

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 24-25. It is anticipated that \$864 will be expended in FY 24-25 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 implementation of this proposed rule may result in an indeterminable increase in state revenue collections in FY 24-25, FY 25-26, and FY 26-27, as behavioral health services providers (BHSPs) who choose to provide additional behavioral health services will be required to pay a nonrefundable application fee.

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

This proposed rule amends provisions governing facility need review (FNR) in order to require residential substance abuse treatment providers, except those that provide services to women, adolescents, or both to be subject to FNR in accordance with Act 692 of the 2024 Regular Session of the Louisiana Legislature. It is anticipated that implementation of this proposed rule may result in an indeterminable amount of costs to BHSPs in FY 24-25, FY 25-26, and FY 26-27, since BHSPs who choose to provide additional behavioral health services will be required to pay a nonrefundable application fee.



IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.