

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Adult Residential Care Providers—Minimum Licensing Standards (LAC 48:I.Chapter 68)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 48:I.Chapter 68 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2163.1-2163.8, and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 68. Adult Residential Care Providers Licensing Standards

Subchapter A. General Provisions

§6801. Introduction

A. These rules and regulations contain the minimum licensure standards for Adult Residential Care Providers, pursuant to R.S. 40:2166.1-2166.8.

B. An adult residential care provider (ARCP) serves individuals in a congregate setting in their own apartments. An ARCP is operational 24 hours per day, seven days per week.

C. An ARCP provides adult residential care for two or more adults who are unrelated to the licensee or the operator.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2582 (December 2008).

§6803. Definitions

Abuse—the infliction of physical or mental injury or the causing of the deterioration of a resident by means including, but not limited to, sexual abuse, exploitation, or extortion of funds or other things of value to such an extent that the resident's health, moral, or emotional well-being is endangered.

Activities of Daily Living—activities of daily living include, but are not limited to, ambulating, transferring, grooming, bathing, dressing, eating and toileting.

Administrator—the person who is in charge of the daily operation of the facility.

Adult Residential Care Service Plan—a written description of the functional capabilities of an individual, the individual's need for personal assistance and the services to be provided to meet the individual's needs.

Adult Residential Care Provider (ARCP)—any facility, agency, institution, society, corporation, partnership, company, entity, residence, person or persons, or any other group, whether public or private, that provides residential living units and provides adult residential care services for compensation to two or more adults who are unrelated to the facility owner or director.

1. An ARCP shall be licensed by the Louisiana Department of Health and Hospitals to provide all services required of an adult residential care provider.

Adult Residential Care Services—a coordinated array of supportive personal services, 24-hour supervision and assistance, both scheduled and unscheduled assistance, activities, and health related services designed to accommodate an individual resident's changing needs and preference.

Aging in Place—allowing residents to receive necessary support services in response to changing needs and circumstances without having to move from one's present residence, provided such services are within the parameters of these licensing standards.

Alzheimer's Special Care Unit (ASCU)—a separate and distinct unit within an ARCP or other long term care facility that segregates and provides a special program for residents who have a diagnosis of probable Alzheimer's disease or related dementia, and that advertises, markets or otherwise promotes the facility as providing specialized Alzheimer's or related dementia care services.

Chemical Restraint—a psychopharmacologic drug that is not used for discipline or convenience and not required to treat medical symptoms.

Common Area (Space)—the interior congregate space(s) made available for the free and informal use by residents or the guests of the ARCP. Common areas may include dining rooms, activity rooms, library, and other areas exclusive of resident's rooms and bathrooms.

Department—the Louisiana Department of Health and Hospitals.

Direct Care Staff—any staff acting on behalf of, employed by, or contracted by the ARCP facility, to provide direct care services or assistance to residents. This includes activities of daily living and tasks related to medication administration or assistance. Direct care staff may include, but is not limited to a:

1. registered nurse;
2. licensed practical nurse;
3. certified nursing assistant; and
4. direct service worker.

Health Care Services—any service provided to a resident by an ARCP or third-party provider and required to be provided or delegated by a licensed, registered or certified health care professional. Any other service, whether or not ordered by a physician, that is not required to be provided by a licensed, registered or certified health care professional is not to be considered a health care service.

House Rules—any written and posted statements addressing house activities in an ARCP that must be in compliance with ARCP regulations or other Louisiana regulatory authority, but are specific to the ARCP dwelling (e.g. pet policy, non-smoking policy). Residents should be made aware of these rules prior to admission to the ARCP.

Incident—any occurrence, situation or circumstance affecting the health, safety or well-being of a resident or residents.

Instrumental Activities of Daily Living (IADLs)—instrumental, essential activities for persons, but are not usually considered as basis or vital activities of daily living, and may not be daily activities. Such activities would include, but are not limited to:

1. socialization;
2. managing personal affairs;

3. financial management;
4. shopping;
5. housekeeping;
6. appropriate transportation;
7. correspondence; and
8. behavior and health management.

Intermittent nursing care—care that is provided episodically, irregularly or for a limited period of time by licensed nursing staff. Examples include:

1. episodic—dressing changes and treatment for a recurring leg ulcer for a diabetic resident;
2. irregularly—monitoring blood sugar levels by finger stick when a change in the resident's mental status is noted; and
3. limited time period—blood pressure checks daily or weekly for two weeks.

Neglect—the failure to provide the proper or necessary medical care, nutrition, or other care necessary for a resident's well-being.

Negotiated Risk—the process of balancing resident choice and independence with the health and safety of the resident or other persons in the facility or program.

Personal Care Services—services that directly help a resident with certain activities of daily living such as:

1. assistance with mobility and transfers;
2. assistance with meal consumption;
3. grooming;
4. shaving;
5. trimming or shaping fingernails and toenails;
6. bathing;
7. dressing;
8. personal hygiene;
9. bladder and bowel requirements, including incontinence; or
10. self-assistance with medication to the extent permitted by law or regulation.

Personal Representative—a person who represents the interests of the applicant who is not capable of self-direction. The function of the personal representative is to accompany, assist, and represent the applicant in the program evaluation process, and to aid in obtaining all necessary documentation for the agency's evaluation for services.

Physical Restraint—any physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily, and which restricts freedom of movement or normal access to one's body and is not used as an assistive device.

Renovation—cosmetic changes to the existing facility including, but not limited to:

1. painting;
2. replacement or repair of carpet, tile or linoleum; and
3. minor repairs.

Residential Living Unit—a separate apartment or unit providing a private residential area, which includes living space, sleeping space, kitchen area, bathroom, and adequate storage areas.

Substantial Rehabilitation—any rehabilitation that involves structural changes in which hard costs are equal to or exceed the per unit cost for substantial rehabilitation as defined by the Louisiana Housing Finance Agency.

Visually and Functionally Distinct Area—a space that can be distinguished by sight from other areas within the apartment. A visually and functionally distinct area need not be a separate room. To create a visually distinct area, one or more of the following methods must be employed:

1. change in ceiling height;
2. separation by ceiling soffit(s) or wall returns;
3. change in flooring color;
4. partial height partitions or counters;
5. use of alcoves; or
6. use of permanent screening devices such as columns or fixed screens.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2582 (December 2008).

§6805. Licensure Requirements

A. All ARCP facilities shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for ARCP facilities in the State of Louisiana. It shall be unlawful to operate an ARCP facility without possessing a current, valid license issued by DHH. The license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the ARCP facility to which it is issued and only for the specific geographic address of that facility;
3. be valid for one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that date, or unless a provisional license is issued;
4. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the ARCP;
5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

B. In order for the ARCP facility to be considered operational and retain licensed status, the facility shall meet the following conditions.

1. The ARCP shall always have at least one employee on duty at the business location 24 hours per day, seven days per week.
2. There shall be staff employed and available to be assigned to provide care and services to residents at all times.
3. The ARCP shall have admitted at least two residents in the preceding 12 months prior to their licensure renewal survey.

C. The licensed ARCP shall abide by and adhere to any state law, rules, policy, procedure, manual, or memorandums pertaining to ARCP facilities.

D. A separately licensed ARCP shall not use a name which is substantially the same as the name of another ARCP licensed by the Department.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2584 (December 2008).

§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 DHH prior to an applicant providing ARCP services. An applicant shall submit a completed initial licensing packet to DHH, which shall include:

1. a completed ARCP licensure application and the non-refundable licensing fee as established by statute;
2. a copy of the approval letter of the architectural facility plans from the DHH Department of Engineering and Architectural Services and the Office of the State Fire Marshal;
3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal;
4. a copy of the health inspection report with approval of occupancy from the Office of Public Health;
5. a copy of criminal background checks on all owners;
6. proof of financial viability entails:
 - a. verification of sufficient assets equal to \$100,000 or the cost of three months of operation, whichever is less; or
 - b. a letter of credit equal to \$100,000 or the cost of three months of operation, whichever is less.
7. proof of general and professional liability insurance of at least \$300,000;
8. proof of worker's compensation insurance;
9. if applicable, Clinical Laboratory Improvement Amendments (CLIA) certificate or CLIA certificate of waiver;
10. a completed disclosure of ownership and control information form;
11. a floor sketch or drawing of the premises to be licensed;
12. the days and hours of operation; and
13. any other documentation or information required by the department for licensure.

B. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will have 90 days to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ARCP provider shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

C. Once the initial licensing application packet has been approved by DHH, the ARCP applicant shall notify DHH of readiness for an initial licensing survey within 90 days. If an applicant fails to notify DHH of readiness for an initial licensing survey within 90 days, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ARCP provider shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

D. Applicants must be in compliance with all appropriate federal, state, departmental, or local statutes, laws, ordinances, rules, regulations and fees before the ARCP will be issued an initial license to operate by DHH.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2584 (December 2008).

§6809. Initial Licensing Surveys

A. Prior to the initial license being issued to the ARCP provider, an initial licensing survey shall be conducted on-site at the ARCP facility to assure compliance with ARCP licensing standards. No resident shall be provided services by the ARCP until the initial licensing survey has been performed, the ARCP found in compliance and the initial license issued to the ARCP by DHH.

B. In the event that the initial licensing survey finds that the ARCP facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

C. In the event that the initial licensing survey finds that the ARCP facility is noncompliant with any licensing laws or regulations that present a potential threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the ARCP facility is noncompliant with any other required statutes, laws, ordinances, rules or regulations that present a potential threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

E. In the event that the initial licensing survey finds that the ARCP facility is noncompliant with any licensing laws or regulations, but the department in its sole discretion determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The provider shall submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, then a full license will be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

F. In the event that the initial licensing survey finds that the ARCP facility is noncompliant with any required statutes, laws, ordinances, rules or regulations, but the department in its sole discretion determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The provider shall submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, then a full license will be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

G. When issued, the initial ARCP license shall specify the maximum number of beds and units that are licensed to the ARCP.

H. The initial licensing survey of an ARCP provider shall be an announced survey. Follow-up surveys to the initial licensing surveys are not announced surveys.

I. Once an ARCP has been issued an initial license, the department shall conduct licensing and other surveys at intervals deemed necessary by DHH to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations, and fees; these surveys shall be unannounced.

1. A plan of correction will be required from an ARCP for any survey where deficiencies have been cited. Such plan of correction shall be approved by DHH.

2. A follow-up survey shall be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices.

3. The department may issue appropriate sanctions, including, but not limited to:

- a. civil monetary penalties;
- b. directed plans of correction; and
- c. license revocations for deficiencies and noncompliance with any licensing survey.

J. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any licensing or other survey. DHH surveyors and staff shall be allowed to interview any provider staff or participant as necessary to conduct the survey.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:258 (December 2008).

§6811. Types of Licenses and Expiration Dates

A. The department shall have the authority to issue the following types of licenses:

1. In the event that the initial licensing survey finds that the ARCP is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

2. In the event that the initial licensing survey finds that the ARCP is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, the department is authorized to issue a provisional initial license pursuant to the requirements and provisions of these regulations.

3. The department may issue a full renewal license to an existing licensed ARCP provider who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. The department, in its sole discretion, may issue a provisional license to an existing licensed ARCP provider for a period not to exceed six months, for the following reasons:

a. the existing ARCP provider has more than five deficient practices or deficiencies cited during any one survey;

b. the existing ARCP provider has more than three validated complaints in one licensed year period;

c. the existing ARCP provider has been issued a deficiency that involved placing a participant at risk for serious harm or death;

d. the existing ARCP provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey; or

e. the existing ARCP provider is not in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

5. When the department issues a provisional license to an existing licensed ARCP provider, the department shall conduct an on-site follow-up survey at the ARCP provider prior to the expiration of the provisional license. If that on-site follow-up survey determines that the ARCP provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, then the department may issue a full license for the remainder of the year until the anniversary date of the ARCP license. If that on-site follow-up survey determines that the ARCP has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, 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 and fee.

B. If an existing licensed ARCP provider has been issued a notice of license revocation, suspension, or termination, and the provider's license is due for annual renewal, the department shall deny the license renewal application.

1. If a timely administrative appeal has been filed by the provider regarding the license revocation, suspension, or termination, the administrative appeal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the administrative tribunal or department issues a decision on the license revocation, suspension, or termination.

2. If the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a participant, the imposition of such action may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the facility will be notified in writing.

3. The denial of the license renewal application does not affect in any manner the license revocation, suspension, or termination.

C. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the provider.

D. The license for an ARCP shall be valid for one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that time.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2585 (December 2008).

§6813. Changes in Licensee Information or Personnel

A. An ARCP license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any change regarding the ARCP's entity name, doing business as name, geographical address, mailing address, phone number, or any combination thereof, shall be reported in writing to DHH five days prior to the change.

C. Any change regarding the ARCP's key administrative personnel shall be reported in writing to DHH within 10 days of the change.

1. Key administrative personnel include the:
 - a. administrator;
 - b. assistant administrator;
 - c. manager; and
 - d. clinical director of nursing.

2. The facility's notice to DHH shall include the individual's:

- a. name;
- b. address;
- c. hire date; and
- d. qualifications.

D. A change of ownership (CHOW) of the ARCP shall be reported in writing to the department within five days of the change of ownership. 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 document, all documents required for a new license, and the applicable licensing fee. Once all application requirements are completed and approved by DHH, a new license shall be issued to the new owner.

E. If the ARCP changes its name without a change in ownership, the ARCP shall report such change to DHH in writing five days prior to the change. The change in the ARCP name requires a change in the ARCP license. There is a \$25 fee for a name change and license.

F. Any request for a duplicate license shall be accompanied by a \$10 fee.

G. An ARCP that will be holding medications for residents and not stocking controlled dangerous substances will not be required to make application for a controlled dangerous substance (CDS) license.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2586 (December 2008).

§6815. Renewal of License

A. License Renewal Application. The ARCP provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. the days and hours of operation;
3. a current fire inspection report;
4. a current health inspection report;
5. the license renewal fee; and
6. any other documentation required by the department.

B. The Department may perform an on-site survey and inspection upon annual renewal of a license.

C. Failure to submit to DHH a completed license renewal application packet prior to the expiration of the

current license will result in the voluntary non-renewal of the ARCP license.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2587 (December 2008).

§6817. Denial of License, Revocation of License, Denial of License Renewal

A. The department may deny an application for a license, may deny a license renewal or may revoke a license in accordance with the provisions of the Administrative Procedure Act.

B. Denial of a Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the ARCP is noncompliant with any licensing laws or regulations that present a potential threat to the health, safety, or welfare of the residents.

2. The department shall deny an initial license in the event that the initial licensing survey finds that the ARCP is noncompliant with any other required statutes, laws, ordinances, rules or regulations that present a potential threat to the health, safety, or welfare of the residents.

3. The department shall deny an initial license for any of the reasons in this §6817.D that a license may be revoked or non-renewed.

C. Voluntary Non-Renewal of a License

1. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

D. Revocation of License or Denial of License Renewal. An ARCP license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the ARCP licensing laws, rules and regulations;
2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules, or regulations;
3. failure to comply with the terms and provisions of a settlement agreement or education letter;
4. failure to uphold resident rights whereby deficient practices may result in harm, injury, or death of a resident;
5. failure to protect a resident from a harmful act of an employee or other resident including, but not limited to:
 - a. abuse, neglect, exploitation, or extortion;
 - b. any action posing a threat to a resident's health and safety;
 - c. coercion;
 - d. threat or intimidation; or
 - e. harassment;
6. failure to notify the proper authorities of all suspected cases of neglect, criminal activity, mental or physical abuse, or any combination thereof;
7. knowingly making a false statement in any of the following areas, including but not limited to:
 - a. application for initial license or renewal of license;
 - b. data forms;
 - c. clinical records, resident records, or provider records;

d. matters under investigation by the department or the Office of the Attorney General; or

e. information submitted for reimbursement from any payment source;

8. knowingly making a false statement or providing false, forged, or altered information or documentation to DHH employees or to law enforcement agencies;

9. the use of false, fraudulent or misleading advertising;

10. fraudulent operation of an ARCP by the owner, administrator or manager;

11. an owner, officer, member, manager, administrator or person designated to manage or supervise participant care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court.

a. For purposes of this paragraph, conviction of a felony means a felony relating to the violence, abuse, or negligence of a person, or a felony relating to the misappropriation of property belonging to another person.

12. failure to comply with all reporting requirements in a timely manner as required by the department;

13. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or participants;

14. failure to allow or refusal to allow access to authorized departmental personnel to record;

15. bribery, harassment, or intimidation of any participant designed to cause that participant to use the services of any particular ARCP provider; or

16. cessation of business or non-operational status;

E. In the event an ARCP license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, manager, director or administrator of such ARCP is prohibited from owning, managing, directing or operating another ARCP for a period of two years from the date of the final disposition of the revocation or denial action.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2587 (December 2008).

§6819. Notice and Appeal of License Denial, License Revocation and License Non-Renewal

A. Notice of a license denial, license revocation or license non-renewal shall be given to the provider in writing.

B. The ARCP provider has a right to an informal reconsideration of the license denial, license revocation, or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The ARCP provider shall request the informal reconsideration within 15 days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal

reconsideration shall be scheduled and the provider will receive written notification.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the denial, revocation or non-renewal, shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The ARCP provider has a right to an administrative appeal of the license denial, license revocation, or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the provider.

1. The ARCP provider shall request the administrative appeal within 30 days of the receipt of the results of the informal reconsideration. The ARCP may forego its rights to an informal reconsideration, and if so, the ARCP shall request the administration appeal within 30 days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for administrative appeal shall be in writing and shall be submitted to the DHH Bureau of Appeals.

2. The request for administrative appeal shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Bureau of Appeals, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a participant, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the facility will be notified in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal, shall not be a basis for the administrative appeal.

D. If an existing licensed ARCP provider has been issued a notice of license revocation and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal, or license revocation, the administrative tribunal shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the administrative tribunal if good cause is shown.

1. If the final agency decision is to reverse the license denial, the license non-renewal, or the license revocation, the provider's license will be re-instated or granted upon the

payment of any licensing or other fees due to the department.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new ARCP provider. An existing provider who has been issued a provisional license remains licensed and operational and also has no right to an informal reconsideration or an administrative appeal. The issuance of a provisional license to an existing ARCP provider is not considered to be a denial of license, a denial of license renewal, or a license revocation.

1. A follow-up survey shall be conducted prior to the expiration of a provisional initial license to a new ARCP provider or the expiration of a provisional license to an existing provider.

2. A new provider that is issued a provisional initial license or an existing provider that is issued a provisional license shall be required to correct all noncompliance or deficiencies at the time the follow-up survey is conducted.

3. If all noncompliance or deficiencies have not been corrected at the time of the follow-up survey, or if new deficiencies that are a threat to the health, safety, or welfare of residents are cited on the follow-up survey, the provisional initial license or provisional license shall expire on its face.

4. The department shall issue written notice to the provider of the results of the follow-up survey.

5. A provider with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey, shall have the right to an informal reconsideration and the right to an administrative appeal.

a. The correction of a violation, noncompliance, or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

b. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

c. The provider must request the informal reconsideration within five days of the notice of the results of the follow-up survey from the department.

d. The provider must request the administrative appeal within 15 days of the notice of the results of the follow-up survey from the department.

e. A provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this section shall cease providing services unless the administrative tribunal issues a stay of the expiration. The stay may be granted by the administrative tribunal upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing, and only upon a showing that there is no potential harm to the residents being served by the provider.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2588 (December 2008).

§6821. Complaint Surveys

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13, et seq.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction shall be submitted to the department for any complaint survey where deficiencies have been cited.

D. A follow-up survey shall be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices.

E. The department may issue appropriate sanctions, including but not limited to, civil monetary penalties, directed plans of correction, and license revocations for deficiencies and non-compliance with any complaint survey.

F. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff, participant, or resident as necessary or required to conduct the survey.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2589 (December 2008).

§6823. Statement of Deficiencies

A. Any statement of deficiencies issued by the department to the ARCP provider shall be posted in a conspicuous place on the licensed premises.

B. Any statement of deficiencies issued by the department to an ARCP provider shall be available for disclosure to the public 30 days after the provider submits an acceptable plan of correction to the deficiencies or 90 days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in this licensing rule, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 15 days of receipt of the statement of deficiencies.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standard Section.

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.11, et seq., and as provided for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

5. The provider shall be notified in writing of the results of the informal reconsideration.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2589 (December 2008).

Subchapter B. Administration and Organization

§6827. Governing Body

A. Each ARCP must have an owner or identifiable governing body with responsibility for, and authority over, the policies and activities of the ARCP and ultimate authority for:

1. the overall operation of the facility;
2. the adequacy and quality of care;
3. the financial solvency of the facility and the appropriate use of its funds;

4. the implementation of the standards set forth in these regulations; and

5. the adoption, implementation and maintenance, in accordance with the requirement of state and federal laws and regulations and these licensing standards, of adult residential care and administrative policies governing the operation of the facility.

B. The ARCP shall have documents identifying the following information regarding the governing body:

1. names and addresses of all members;
2. terms of membership;
3. officers of the governing body; and
4. terms of office of any officers.

C. When the governing body of an ARCP is comprised of more than one person, the governing body shall hold formal meetings at least twice a year. There shall be written minutes of all formal meetings and bylaws specifying frequency of meetings and quorum requirements.

D. When the governing body is composed of only one person, this person shall assume all responsibilities of the governing body.

E. Responsibilities of a Governing Body. The governing body of an ARCP shall:

1. ensure the ARCP's compliance and conformity with the provider's charter or other organizational documents;
2. ensure the ARCP's continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;
3. ensure that the ARCP is adequately funded and fiscally sound;
4. review and approve the ARCP's annual budget;
5. designate a person to act as administrator and delegate sufficient authority to this person to manage the facility;
 - a. a sole owner may be the administrator;
6. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;
7. annually evaluate the administrator's performance (if a sole owner is not acting as administrator);
8. have the authority to dismiss the administrator (if a sole owner is not acting as administrator);
9. meet with designated representatives of the department whenever required to do so; and
10. inform designated representatives of the department prior to initiating any substantial changes in the services provided by the provider.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2589 (December 2008).

§6829. Policy and Procedures

A. An ARCP shall provide continuous 24-hour supervision and services that:

1. conform to department rules and regulations;
2. meet the needs of the residents of the facility;
3. provide for the full protection of residents' rights; and
4. promote the social, physical, and mental well being of residents.

B. An ARCP shall make any required information or records and any information reasonably related to assessment of compliance with these requirements available to the department.

C. An ARCP shall allow designated representatives of the department in performance of their mandated duties to:

1. inspect all aspects of an ARCP's operations which directly or indirectly impact residents; and
2. conduct interviews with any staff member or resident of the facility.

D. An ARCP shall, upon request by the department, make available the legal ownership documents.

E. The ARCP shall have written policies and procedures approved by the owner or governing body that address at a minimum the following:

1. confidentiality and security of files;
2. publicity and marketing;
3. personnel;
4. resident's rights;
5. grievance procedures;
6. resident's funds;
7. emergency preparedness planning procedures to include plans for evacuation and sheltering in place;
8. abuse and neglect;
9. Incidents and accidents;
10. admissions and discharge procedures;
11. medication management; and
12. pet policy.

F. Personnel Policies. An ARCP shall have written personnel policies that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members;
2. written job descriptions for each staff position including volunteers;
3. policies which provide for staff, upon offer of employment, to have a health assessment as defined by the provider and in accordance with Office of Public Health guidelines;
4. an employee grievance procedure;
5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether that abuse or mistreatment is done by another staff member, a family member, a resident, or any other person; and
6. a written policy to prevent discrimination.

G. The ARCP shall be fully operational for the business of providing ARCP services on a 24-hour basis, seven days per week and have required staff on duty at all times of operation.

H. An ARCP shall maintain in force at all times, at minimum, general and professional liability insurance policies and worker's compensation insurance.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2590 (December 2008).

Subchapter C. Admission and Discharge Criteria

§6833. Admission

A. Pre-admission/Screening. The ARCP shall provide applicant information on admission, services, cost, and policies/procedures.

1. This written information shall include, but is not limited to the following:

- a. the application process and the possible reasons for rejection of an application;
- b. types of residents suitable to the facility;
- c. services offered and allowed in the facility;
- d. facility's house rules;
- e. fee structure; and
- f. discharge criteria

2. The ARC shall complete and maintain a comprehensive assessment of the applicant prior to admission. This initial screening shall assess the applicant's needs and appropriateness for admissions and shall include the following:

- a. the resident's physical and mental status;
- b. the resident's need for personal services;
- c. the resident's need for assistance with instrumental activities of daily living; and
- d. the resident's ability to evacuate the facility in the event of an emergency.

3. The pre-admission assessment shall be completed and dated before the contract/admissions agreement is signed.

B. Residents considered for admission may include those who need, or wish to have available for themselves or their spouse, room, board, personal care and supervision due to age, infirmity, physical disability or social dependency. The facility shall have a clear and specific written description of admission policies and procedures.

C. Prohibited Health Conditions. There are individuals who are not eligible for the ARCP program because their conditions and care needs are beyond the scope of the program's capacity to deliver nursing services and ensure health, safety, and welfare. ARCPs may not accept residents with such conditions. These prohibited health conditions include:

1. stage 3 or stage 4 pressure sores (pressure ulcers);
2. nasogastric tubes;
3. ventilator dependency;
4. BiPap dependency without the ability to self-administer at all times (BiPap is a non-invasive form of mechanical ventilation);
5. coma;
6. continuous IV/TPN therapy (TPN - Total Parental Nutrition is an intravenous form of complete nutritional sustenance);
7. wound vac therapy (A system that uses controlled negative pressure, vacuum therapy, to help promote wound healing.);
8. active communicable tuberculosis;
9. diagnosis of psychotic condition with history of violent behavior; or
10. restraints except as permitted in these standards.

D. Time Limited Residency. ARCP residents with a prohibited condition may remain in residence on a time limited basis under the following conditions:

1. a licensed medical practitioner has certified that the condition is time limited and not permanent; and
 - a. the ARCP is prepared to deliver the additional services or coordinate, collaborate or contract with providers who may enter the ARCP to meet time limited needs.
2. Time limited is defined as 90 days, except in the case of a resident approved for or currently receiving hospice services.

E. Admission Agreement. The ARCP shall complete and maintain individual written admission agreements with all persons admitted to the facility or with their legally responsible person or persons.

1. The facility contract/admissions agreement shall specify the following:

- a. clear and specific occupancy criteria and procedures (admission, transfer, and discharge);
- b. basic services provided;
- c. optional services;
- d. payment provisions for both basic and optional services, including the following:
 - i. service packages and "a la carte" services;
 - ii. regular and extra fees;
 - iii. payer; and
 - iv. due date;
- e. procedures for the modification of the admission agreement, including provision of at least 30 days prior written notice to the resident of any basic rate change;
- f. refund policy;
- g. general facility policies which are for the purpose of making it possible for residents to live together, including policies and rules regarding third-party providers arranged by the resident (the use of private duty nurses or assistants);
- h. division of responsibility between the facility, the resident, family, or others (e.g., arranging for or overseeing medical care, purchase of essential or desired supplies, emergencies, monitoring of health, handling of finances);
- i. residents' rights; and
- j. grievance procedure process.

2. The ARCP shall allow review of the contract/admissions agreement by an attorney or other representative chosen by the resident.

3. The admissions agreement shall be signed by the administrator and by the resident or personal representative.

4. The admissions agreement shall conform to all relevant federal, state and local laws and requirements.

F. At the time of admission the ARCP shall:

1. obtain from the resident or the resident's legal representative or legal guardian, their plan for both routine and emergency medical care which shall include:
 - a. the name of physician(s); and
 - b. provisions and authorization for emergency medical care;
2. provide the resident with a copy of the facility's emergency and evacuation procedures; and
3. provide the resident with a copy of the house rules.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2590 (December 2008).

§6835. Negotiated Risk Agreements

A. An ARCP may have a strategy to manage risks to the participants' health, safety and welfare. For ARCP providers, negotiated risk means the process of balancing resident choice and independence with the health and safety of the resident and other persons in the facility or program. If a resident's preference or decision places the resident or others at risk or is likely to lead to adverse consequences, such risks or consequences are discussed with the resident and with a resident representative upon consent of the resident. A formal plan to avoid or reduce negative or adverse outcomes shall be developed.

B. Negotiated risk agreements may not be necessary for residents who develop prohibited health conditions that are time limited; although providers may enter into negotiated risk agreements with these residents at their discretion.

C. Key elements of ARCP negotiated risk agreements are elements that identify conflicts between the ARCP and the participant. The key elements should include:

1. a statement of the consumer or legal representative's preference with respect to the identified risk issue;

2. a statement of the provider's perspective on the issue including a description of the provider policies, practices, and professional recommendations that conflict with the consumer's preferences; and

3. a statement of the perspective of the consumer's support team that participated in the development of the service plan.

a. This area must precisely define the conflict and source (i.e., licensure concern, etc.).

D. The document should frame a discussion for the risks and alternatives by providing:

1. an overview of possible risks of the participant or legal guardian's preferred action;

2. description of alternative actions that the ARC is more comfortable with;

3. documentation that the participant or legal guardian understands the risks and alternatives; and

4. language that the participant and/or legal representative has the right and opportunity to seek professional advice from legal counsel or medical professionals before signing the risk agreement.

E. The document should provide for implementation of the agreed upon actions to minimize risks by providing:

1. clear easily understood language mapping out the agreement between the participant and the ARCP including terms, conditions, expectations, and responsibilities framing the participant's behavior once he or she moves into the ARCP; and

2. the participant or legal guardian's release of any claim against the ARCP for any participant injuries related to behaviors mapped out in the agreement.

F. Risk agreements must be reviewed with the resident at least every six months or more frequently as issues arise. Long-term care ombudsmen offices may be involved as needed.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2591 (December 2008).

§6837. Discharge

A. Voluntary Discharge

1. The resident shall give 30 days written calendar notice to the facility of their intent to vacate the facility.

2. If the resident vacates the facility prior to the stated exit date, rent is not due back to the individual.

B. Involuntary Transfer/Discharge and Emergency Transfer

1. The resident has the right to remain in the facility and not be transferred or discharged unless one of the following occurs:

a. the resident's mental or physical condition deteriorates to a level requiring services that cannot be provided in an ARCP;

b. the resident's needs cannot be met by the facility and the transfer or discharge is necessary for the resident's welfare;

c. the resident's health has improved sufficiently so that he no longer needs the services provided by the facility;

d. the safety of other residents or staff in the facility is endangered;

e. the health of other residents or staff in the facility would otherwise be endangered;

f. the resident has a prohibited condition as defined in these provisions, unless the condition is time limited or the resident is approved for an currently receiving hospice services;

i. a resident with such a prohibited condition shall not be permitted to remain in an ARCP, regardless of whether the resident is willing to execute a negotiated risk agreement relieving the ARCP of the responsibility attendant to the resident's continued placement;

g. the resident or his legal representative refuses to enter into a negotiated risk agreement, refuses to revise the agreement when there is a documented medical reason for the need of a managed risk agreement or revision thereto, or refuses to comply with the terms of the negotiated risk agreement;

h. the resident or his legal representative refuses to cooperate in an examination by the physician or advance practice nurse or licensed psychologist of his own choosing to determine the resident's health or mental status for the purpose of establishing appropriateness for continuation of residency or discharge.

i. the resident has failed, after 30 days written notice, to pay or have paid for a stay at the facility; or

j. the facility ceases to operate.

2. The resident and his legal representative, and interested family member if such is known and available, shall be notified in writing of the discharge or transfer.

a. The written notice shall be in a language and in a manner that the resident and his legal representative and interested family member understand.

b. The written notice of the transfer or discharge must be given no less than 30 days in advance of the proposed transfer or discharge. However, notice may be given as soon as practicable if an emergency condition exists whereby the continued stay of the resident will constitute a direct threat of serious harm, serious injury or death to the resident, another resident, or staff.

c. In facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to 15 days for nonpayment of a bill for a stay at the facility.

3. The resident, his legal representative or interested family member, if known and available, shall have the right to appeal any transfer or discharge to the department, which shall provide a fair hearing in all such appeals.

4. The ARCP shall ensure that the transfer or discharge is effectuated in a safe and orderly manner.

5. The resident and his legal representative, and interested family member(s) shall be consulted in the discharge or transfer planning, and shall be consulted in choosing another facility if facility placement is required.

a. The ARCP shall provide a written discharge plan describing how it will assist in the relocation of the resident or in securing another provider to meet the resident's needs.

6. If an emergency condition exists whereby the continued stay of the resident will constitute a direct threat of serious harm, serious injury or death to the resident, another resident, or staff, the ARCP may immediately transfer the resident to a setting appropriate to the resident's medical needs.

a. Under no circumstance shall a resident be transferred to a setting that does not meet the needs of that resident.

b. An emergency transfer does not necessarily constitute discharge. Required notice shall be provided if the resident will be discharged.

c. If the facility effects an emergency transfer, the facility shall document the nature of the emergency and the need for the transfer.

d. If the facility effects an emergency transfer, the facility shall contact the resident's legal representative and shall contact the resident's interested family member(s), if known and available. Contact shall be made before the transfer if possible, and shall be made as soon as possible after the transfer if prior contact is not possible.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2592 (December 2008).

Subchapter D. ARCP Services

§6839. General Provisions

A. Adult residential care services are a coordinated array of supportive personal services, 24-hour supervision and assistance, both scheduled and unscheduled assistance, activities, and health related services designed to accommodate an individual resident's changing needs and preference. Adult residential care includes, but is not limited to the following services:

1. lodging;
2. meals;
3. medication administration;
4. intermittent nursing services;
5. assistance with personal hygiene;
6. assistance with transfers and ambulation;
7. assistance with dressing;
8. assistance with transportation;
9. housekeeping;
10. laundry;
11. social activities;
12. direct care services;
13. health care services; and
14. twenty-four hour supervision and care.

B. An admission assessment shall be completed within three business days of admission to determine the service needs and preferences of the resident. This assessment shall be kept in the resident's record.

C. Within seven days after admission, the ARCP provider with input from the resident and/or his/her personal representative shall develop a service plan using information from the admission assessment. The service plan shall include:

1. the services required to meet the resident's needs;
2. the scope, frequency, and duration of services;
3. monitoring that will be provided; and

4. who is responsible for providing the services, including contract or arranged services.

D. The service plan shall be monitored on an ongoing basis to determine its continued appropriateness and to identify when a resident's condition or preferences have changed.

1. A documented review of the service plan shall be made at least every quarter. However, changes to the plan may be made at any time, as necessary.

E. All plans, reviews and updates shall be signed by the resident, facility staff, and the legal representative, if applicable.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2593 (December 2008).

§6841. Personal and Supportive Services

A. An ARCP shall provide, make available, coordinate, or contract for services to meet a resident's personal and health care needs as identified in his/her service plan, to meet unscheduled care needs, and to make emergency assistance available 24 hours a day. These services must be provided in a manner that does not pose an undue hardship on residents.

1. An ARCP shall respond to changes in residents' needs for services by revising the service plan and, if necessary, by adjusting its staffing plan or contracting for services from other providers.

2. The facility shall provide adequate services and oversight/supervision including adequate security measures, around the clock as needed for any resident.

B. The facility shall provide or coordinate, to the extent needed or desired by residents, the following services:

1. assistance with all activities of daily living and instrumental activities of daily living;

2. at a minimum, three varied, appetizing meals a day, seven days a week that take into account the residents' preferences and needs;

3. basic personal laundry services;

a. Each ARCP provider shall offer laundry facilities or services to its residents. For those residents who are not able to launder their own personal items, the facility shall include this service as part of the service package.

b. The facility may provide this service for free or for an additional fee and shall be indicated as such in the occupancy admission agreement.

4. opportunities for individual and group socialization and to utilize community resources to create a normal and realistic environment for community interaction within and outside of the ARCP (i.e. barber/beauty services, social/recreational opportunities);

5. services for residents who have behavior problems requiring ongoing staff support, intervention, and supervision to ensure no danger or infringement of the rights of other residents or individuals;

6. transportation either provided or arranged by the ARCP;

7. household services essential for the health and comfort of the resident (i.e. floor cleaning, dusting, bed making, etc.);

8. assistance with self-administration of medication by appropriately trained unlicensed staff and administration of medications as necessary by licensed nursing staff;

9. a program of recreational activities;
10. assistance with cognitive orientation and behavioral management.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2593 (December 2008).

§6843. Medication Administration

A. The ARCP shall have clear written policies and procedures on medication administration to include staff administration and self-administration, including appropriate documentation regarding both practices.

B. The ARCP shall assist residents in the self-administration of prescriptions and non-prescription medication as agreed to in their contract or service plan and as allowed by state laws and regulations.

C. Assistance with self-administration of medication shall be limited to the following.

1. The resident may be reminded to take his/her medication.
2. The medication regimen, as indicated on the container, may be read to the resident.
3. The dosage may be checked according to the container label.
4. Staff may open the medicine container (i.e. bottle, mediset, blister pack, etc.) if the resident lacks the ability to open the container.
5. The resident may be physically assisted in pouring or otherwise taking medications, so long as the resident is cognitive of what the medication is, what it is for, and the need for the medication.

a. If the resident does not meet this standard for cognitive awareness, any assistance with respect to the resident's medication regimen (outside of a medication reminder) must be delivered by licensing nursing personnel.

D. If desired by the resident, the resident's family, other relatives, or the resident's personal representative may transfer medication from the original container to a medication reminder container (pill organizer box).

E. An employee that provides assistance with the self-administration of medications to a resident shall have documented training on the policies and procedures for medication assistance including the limitations of this assistance. Documentation shall include the signature of the employee. This training shall be repeated at least annually.

F. Medications may be stored in the resident's own living unit/room or in a secure central location.

1. Residents who do not require assistance with self-administration of medications shall be allowed to keep prescription and non-prescription medications in their living unit/room as long as they keep them secured from other residents.

2. If a resident requires assistance with self-administration of medication and the medication is kept in a secure central area, the facility shall:

- a. handle the medication in the same manner as if it were kept in the resident's living unit/room; and
- b. assure that medications shall be delivered to the individual resident at the appropriate time regardless of where the resident may be in the facility.
 - i. Residents shall not be required to come to a "medication" area to receive medications.

G. If a resident requires medication administration by staff, medication must be administered by a licensed nurse, either an RN or LPN.

1. Intravenous (IV) medications are permitted only on a time limited basis and must be administered by an RN.

H. Registered nurses will review medication regimens and administration charting bi-weekly, at a minimum, as part of the adult residential care benefit.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2593 (December 2008).

§6845. Health Related Services

A. Each resident shall have the right to control his/her receipt of health related services including, but not limited to:

1. the right to retain the services of his/her own personal physician, dentist or other health care provider;
2. the right to confidentiality and privacy concerning his/her medical and dental condition and treatment; and
3. the right to select the pharmacy or pharmacist of their choice.

B. The ARCP shall plan or arrange, in conjunction with the resident, the resident's family and/or representative, for the following:

1. health assessment;
2. assistance with health tasks as needed or requested by the resident; and
3. healthcare monitoring.
 - a. Healthcare monitoring consists of a regularly occurring process designed by the facility to identify changes in a resident's healthcare status.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2594 (December 2008).

§6847. Transportation

A. The provider shall provide or arrange transportation for:

1. all medical services, including ancillary services for medically-related care (e.g. physician, pharmacist, therapist, podiatrist);
2. personal services, including barber/beauty services;
3. personal errands; and
4. social/recreational opportunities.

B. Transportation shall be provided for or arranged on a routine basis for reasonable transportation for personal services, errands and social/recreational opportunities. For non-routine transportation, the resident may be charged additional fees provided that the resident is notified in writing in advance and agrees to such charges.

C. The ARCP shall ensure and document that any vehicle used in transporting residents, whether such vehicles are operated by a staff member or any other person acting on behalf of the provider, is inspected and licensed in accordance with state law. The ARCP shall also have current commercial liability insurance in an amount sufficient to ensure payment of any resident losses resulting from that transportation, including uninsured motorist coverage.

D. When transportation services are provided by the facility, whether directly or by third party contract, the

provider shall document and ensure that drivers have a valid Louisiana driver's license, and that they are trained/experienced in assisting residents.

E. Vehicles need to be handicapped accessible or so equipped to meet the needs of residents served.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2594 (December 2008).

§6849. Food and Nutrition

A. The facility shall prepare, at a minimum, 3 meals each day.

B. The ARCP shall make reasonable accommodations, as stated in the resident's service plan for the residents to:

1. meet dietary requirements;
2. meet religious and ethnic preferences;
3. meet the temporary need for meals delivered to the resident's room;
4. meet residents' temporary schedule changes as well as residents' preferences (e.g. to skip a meal or prepare a simple late breakfast); and
5. make snacks, fruits and beverages available to residents daily.

C. The facility's menus, at a minimum, shall be reviewed and approved by a nutritionist or dietician to assure their nutritional appropriateness for the setting's residents.

1. Menus shall be planned and written at least one week in advance and dated as served. The current week's menu shall be posted in one or more prominent place(s) in the facility.

2. The ARCP shall furnish medically prescribed diets to all residents for which it is designated in the service plan.

3. The menus shall be planned or approved by a registered licensed dietician.

4. Records of all menus as serviced shall be kept on file for at least 30 days.

5. All substitutions made on the master menu shall be recorded in writing.

D. All food in the facility shall be safe for human consumption. Grade "A" pasteurized fluid milk and fluid milk products shall be used or served. Dry milk products may not be used, except for cooking purposes.

E. All food preparation areas (excluding areas in residents units) shall be maintained in accordance with state and local sanitation and safe food handling standards. Pets are not allowed in food preparation and serving areas.

1. If food is prepared in a central kitchen and delivered to separate facilities, provision shall be made and approved by the Department of Health and Hospitals, Office of Public Health for proper maintenance of food temperatures and a sanitary mode of transportation.

2. Foods shall be prepared and served in a way that assures that they are appetizing, attractive, and nutritional and that promotes socialization among the residents.

3. Foods shall be prepared by methods that conserve the nutritive value, flavor and appearance. It shall be palatable, properly prepared and sufficient in quantity and quality.

F. The facility's refrigerator(s) shall be maintained at a temperature of 45 degrees Fahrenheit or below. Thermometers shall be provided for all refrigerators and freezers. Food stored in the refrigerator shall be covered.

G. The water supply shall be adequate, of a safe sanitary quality and from an approved source. Clean sanitary drinking water shall be available and accessible in adequate amounts at all times. Disposable cups, if used, shall be stored in such a way as to prevent contamination.

H. The ice scoop for ice machines shall be maintained in a sanitary manner with the handle at no time coming in contact with the ice.

I. Poisonous and toxic materials shall be identified and placed in cabinets which are used for no other purpose.

J. Staff shall be available in the dining area to serve the food and to give individual attention as needed.

K. Specific times for serving meals shall be established and posted.

L. Written reports of inspections by the Department of Health and Hospitals, Office of Public Health shall be kept on file in the facility.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2594 (December 2008).

§6851. Alzheimer Special Care Units

A. Scope and Purpose

1. Adult Residential Care providers may establish separate and distinct units to meet the needs of residents with Alzheimer's disease or related dementias. Such programs shall provide individualized care based upon assessment of the cognitive and functional abilities of Alzheimer's and dementia residents who have been admitted to the program.

B. Alzheimer's/Dementia Program Policies and Procedures

1. An ARCP that advertises or markets itself as an Alzheimer's Special Care Unit (ASCU) shall have written policies and procedures for the Alzheimer's/Dementia Program that are retained by the administrative staff and available to all staff and to members of the public, including those participating in the program.

2. The ARCP shall have established criteria for admission to the program and criteria for discharge from the program when the resident's needs can no longer be met, based upon a registered professional nurse's assessment of the resident's cognitive and functional status.

C. Staff Training for Alzheimer's/Dementia Program. In an ARCP that advertises or markets itself as an ASCU, training in specialized care of residents who are diagnosed by a physician as having alzheimer's/dementia shall be provided to all licensed and unlicensed staff who provide direct care to such residents.

D. Services for Residents with Alzheimer's/Dementia. An ARCP that advertises or markets itself as an ASCU shall provide a member of the public seeking placement of a person diagnosed with alzheimer's and/or related disorders in the facility with a clear and concise written list that includes:

1. The activities that are specifically directed toward residents diagnosed with alzheimer's and related disorders, including, but not limited to, those designed to maintain the resident's dignity and personal identity, enhance socialization and success, and accommodate the cognitive and functional ability of the resident;

2. The frequency of the activities that will be provided to such residents; and

3. The safety policies and procedures and any security monitoring system that is specific to residents diagnosed with alzheimer's and related disorders.

E. An ARCP that advertises or markets itself as an ASCU shall provide a secured exterior area for residents to enjoy the outdoors in a secure manner.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2595 (December 2008).

Subchapter E. Resident Protection

§6855. Resident Rights

A. A provider shall have a written policy on residents' civil rights and shall post and distribute a copy of those civil rights. The practices of the provider shall assure that:

1. no resident of an ARCP facility shall be deprived of civil or legal rights, benefits or privileges guaranteed by the Constitution of the United States or the Constitution of the State of Louisiana solely by reason of status as a resident of an ARCP facility;

2. no resident shall be denied admission, segregated or otherwise subjected to discrimination on the basis of race, sex, handicap, religion, creed, national background or ancestry;

3. a religious organization may not limit admissions to its own adherents; and

4. residents shall live within the least restrictive environment possible in order to retain their individuality and personal freedom.

B. In addition to being entitled to the basic rights enjoyed by other adults, the ARCP's written policy on rights shall assure that residents have the right to:

1. be treated as individuals and with dignity, be assured choice and privacy and the opportunity to act autonomously, take risks to enhance independence and share responsibility for decisions;

2. participate and have family participate, if desired, in the planning of activities and services;

3. receive care and services that are adequate, appropriate, and in compliance with conditions of residency, relevant federal and state laws, rules and regulations and the right to refuse such care and services;

4. receive upon admission, and during his or her stay, a written statement of the services provided by the facility and the charges for these services;

5. be free from mental, emotional, and physical abuse and neglect and be free from chemical or physical restraints used for the purposes of convenience or discipline;

6. have records and other information about the resident kept confidential and released only with a resident's expressed written consent or as required by law;

7. expect and receive responsiveness regarding requests (service, information, etc.) from the administrator and/or staff;

8. to contract to a third-party provider for ancillary services for medically related care (e.g., physician, pharmacist, therapy, podiatry, hospice, and barber or beauty services) and other services necessary as long as the resident remains in compliance with the conditions of residency;

9. have visitors of their choice without restrictions, as long as the rights of others are not infringed upon;

10. have access to private telephone communication;

11. send and receive mail promptly and confidentially;

12. furnish their own rooms and use and maintain personal clothing and possessions as space permits;

13. manage his or her personal funds unless such authority has been delegated to another;

14. are notified in writing by the provider when the ARCP's license status is modified, suspended, revoked or denied renewal, and to be informed of the basis of the action;

a. the resident's legal representative must also be notified;

15. have freedom to participate by choice in community activities and in social, political, medical, and religious activities and to have freedom to refuse such participation;

16. arrange for third-party services at their own expense, that are not required to be provided by the facility, as long as the resident remains in compliance with the conditions of residency;

17. share a room with a spouse or other consenting adult upon their request;

18. residents shall be encouraged and assisted to exercise rights as a citizen; to voice grievances and suggest changes in policies and services to either staff, ombudsman or outside representative without fear of restraint, interference, coercion, discrimination, or reprisal;

19. be given written notice of not less than 30 days prior to discharge from the facility, except when an emergency condition exists whereby the continued stay of the resident will constitute a direct threat of serious harm, serious injury or death to the resident, another resident or staff;

20. remain in their room/living unit unless a change in room/unit is related to resident preference or to transfer conditions stipulated in their contract that relate to the need for higher levels of service;

21. be fully informed of all resident rights and all rules governing resident conduct and responsibilities;

22. consult freely with counsel of their choice;

23. live in a physical environment which ensures their physical and emotional security and well-being;

24. bring pets or service animals into the living units if allowed by the ARCP;

25. contact their advocates as provided by law;

26. voice grievances without discrimination or reprisal; and

a. Such grievances include those with respect to treatment that has been furnished as well as that which has not been furnished (The ARCP must make prompt efforts to resolve grievances the resident may have, including those with respect to the behavior of other residents).

C. Publicity. An ARCP shall have written policies and procedures regarding the photographing and audio or audiovisual recordings of residents. No resident shall be photographed or recorded without the resident's prior informed, written consent.

1. Such consent cannot be made a condition for admission into, remaining in, or participating fully in the activities of the facility.

2. Consent agreements must clearly notify the resident of his/her rights under this regulation, must specify precisely what use is to be made of the photograph or recordings, and are valid for a maximum of one year from the date of

execution. Residents are free to revoke such agreements at any time, either orally or in writing.

3. All photographs and recordings shall be used in a way that respects the dignity and confidentiality of the resident.

D. Each resident shall be fully informed of these rights and of all rules and regulations governing residents' conduct and responsibilities, as evidenced by written acknowledgment, prior to or at the time of admission and when changes occur. Each resident's file shall contain a copy of the written acknowledgment, which shall be signed and dated by the administrator and the resident and/or his or her personal representative.

E. A copy of these rights shall be posted in a prominent location within the common areas of the facility.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2595 (December 2008).

§6857. Restraints

A. The agency must develop and implement written policies and procedures that govern the management of inappropriate behavior of persons receiving services. The policies and procedures must specify that any restraints used to manage inappropriate behavior ensures that the dignity of the individual is considered and that the intervention is the least restrictive method that can be used to effectively prevent injury to self or others.

1. Restraints are strictly prohibited for discipline or convenience of staff.

2. Interventions to manage inappropriate behavior must be employed with sufficient safeguards and supervision to ensure that safety, welfare and civil and human rights are protected.

B. Restraints used to manage inappropriate behavior must be part of a behavior support plan which is incorporated into the individual's ARCP service plan. The plan shall be based on a comprehensive functional assessment by a qualified professional. The plan shall include strategies to decrease or eliminate the interventions. Plans should include protocols to address emergency situations that include immediately contacting the resident's physician.

C. Prior to the use of any restraint on a resident, staff shall demonstrate competence in implementation and documentation.

D. Chemical restraints are used only with a physician's order.

E. If physical restraints or chemical restraints are used, the provider shall write a critical incident report and follow appropriate reporting procedures.

F. The resident and his/her personal representative shall be contacted within 24 hours of the initiation of the restrictive intervention.

G. The agency shall track and trend the use of restraints on each resident. This shall be done yearly at a minimum or if there is a significant change in an individual's condition.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2597 (December 2008).

§6859. Resident Representation and Grievance Procedures

A. Resident Association. The provider shall provide a formal process and structure by which residents, in representative groups and/or as a whole, are given the opportunity to advise the administrator regarding resident services and life at the facility. Any resident association requests, concerns or suggestions presented through this process will be addressed by the administrator within a reasonable time frame, as necessitated by the concern, request or suggestion.

B. Grievance Procedure. A provider shall establish and have written grievance procedures to include, but not limited to:

1. a formal process to present grievances;
2. a formal appeals process for grievances; and
3. a process to respond to residents and resident association requests and written grievances in a timely manner.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2597 (December 2008).

§6861. Resident Personal Property

A. Personal Possessions. The ARCP may, at its discretion, offer to residents the services of safekeeping of valuable possessions. The ARCP shall have a written statement of its policy.

1. If the ARCP offers such a service, a copy of the written policy and procedures shall be given to a resident at the time of his/her admission.

2. The ARCP shall give the resident a receipt listing each item that the ARCP is holding in trust for the resident. A copy of the receipt shall be placed in the resident's record.

B. Resident Funds

1. If an ARCP offers the service of safekeeping of residents' personal funds, the facility's admission agreement shall include the resident's rights regarding personal funds and list the services offered and charges, if any.

2. If an ARCP offers the service of safekeeping, and if a resident wishes to entrust funds, the ARCP:

a. shall obtain written authorization from the resident and/or his/her personal representative as to safekeeping of funds;

b. shall provide each resident with a receipt listing the amount of money the ARCP is holding in trust for the resident; and

c. shall maintain a current balance sheet containing all financial transactions to include the signatures of staff and the resident for each transaction.

3. The resident shall have the right to examine the account during business hours.

4. The resident shall have access through quarterly statements and, upon request, financial records if the ARCP has been delegated the responsibility for handling their financial affairs.

5. Once the ARCP receives the written authorization from the resident, it must safeguard and account for such personal funds under a system established and maintained by the ARCP. The ARCP shall have written policies and procedures to protect funds.

6. The ARCP must deposit any amount of personal funds in excess of \$50, with respect to the resident, in an

interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and credit all interest earned on such separate account to such account.

7. The facility shall purchase a surety bond to assure the security of all personal funds of residents deposited with the facility.

C. Unless otherwise provided by state law, upon the death of a resident, the ARCP shall provide the executor or administrator of the resident's estate, or the representative of the resident, as agreed upon in the admission agreement with a complete accounting of all the resident's funds and personal property being held by the ARCP.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2597 (December 2008).

Subchapter F. Provider Responsibilities

§6863. General Provisions

A. The ARCP shall have qualified staff sufficient in number to meet the scheduled and unscheduled needs of residents and respond in emergency situations. Sufficient support staff shall be employed or contracted to ensure provision of personal care services as required by care plans.

B. Additional staff shall be employed as necessary to perform office work, cooking, house cleaning, laundering, and maintenance of buildings, equipment and grounds.

1. The department may require any facility to provide additional staff whenever it determines that the needs of the particular residents, the extent of services provided, or the physical arrangements of the facility require such additional staff, or the provision of adequate services requires additional staff.

C. A staff member on each shift shall be trained in the use of cardio pulmonary resuscitation (CPR) and first aid.

D. Staff shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with residents and staff.

E. The ARCP shall maintain a current work schedule for all employees, including relief workers, showing actual coverage for each 24-hour day.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2598 (December 2008).

§6865. Staffing Requirements

A. At a minimum the following staff positions are required; however, one person may occupy more than one position in the ARCP but shall not be in this position on the same shift/same day:

1. Administrator. Each facility shall have a qualified Administrator who is an on-site employee and is responsible for the day-to-day management, supervision, and operation of the facility.

a. If the ARCP is located at the same geographical site as a nursing home, the nursing home administrator may also serve as administrator for the ARCP, provided that individual is the administrator of record solely of that nursing facility.

b. One or more assistant administrators may be required, based upon the licensed capacity of the ARCP and the nursing home. The department may make a

determination that one or more assistant administrators are necessary based upon one or both facilities' compliance histories.

c. During periods of temporary absence of the administrator, there shall be a responsible staff person designated to be in charge that has the knowledge and responsibility to handle any situation that may occur.

d. The administrator shall be at least 21 years of age and have the responsibility and authority to carry out the policies of the provider.

2. Administrator Qualifications

a. The administrator shall meet one of the following criteria upon date of hire:

i. a bachelor's degree plus two years of administrative experience in the fields of health, social services, or geriatrics; or

ii. in lieu of a degree, six years of administrative experience in health, social services, or geriatrics, or a combination of undergraduate education and experience for a total of six years; or

iii. a master's degree in geriatrics, health care administration, or in a human service related field; or

iv. be a licensed nursing facility administrator; and

b. Additionally, the administrator shall have successfully completed an administrator certification program consisting of 40 hours of training that has been approved by any one of the following organizations:

i. Louisiana Board of Examiners of Nursing Facility Administrators;

ii. Louisiana Assisted Living Association (LALA);

iii. Gulf States Association of Homes and Services for the Aging (GSASHA);

iv. Louisiana Nursing Home Association (LNHA);

or

v. any of the national assisted living associations, including the:

(a) American Association of Homes and Services for the Aging (AAHSA);

(b) National Center for Assisted Living (NCAL); or

(c) Assisted Living Federation of America (ALFA).

c. Training must be started within six months and completed within 12 months of being appointed administrator.

d. Two years of experience as an assisted living administrator may be substituted in lieu of the certification requirements.

e. Documentation of the administrator's qualifications shall be maintained on file at the facility.

B. Nursing Service Personnel. The facility shall provide a sufficient number of nursing service personnel consisting of registered nurses and licensed practical nurses to provide nursing care to all residents in accordance with resident service plans 24 hours per day.

1. Registered Nurse (RN). The facility shall employ or contract with at least one RN. The ARCP RN need not be physically present at all times at the facility but must be on call and readily accessible to the facility 24 hours a day.

a. The ARCP RN, in conjunction with the resident's physician, shall be responsible for the preparation,

coordination and implementation of the health care services section of the resident's service plan.

b. The ARCP RN shall review and oversee all licensed practical nurses (LPNs), certified nursing assistants (CNAs) and direct care personnel.

c. The RN must be licensed by, and in good standing with, the state of Louisiana, and must comply with all requirements, including continuing education requirements, as established by law or regulation. No individual who is unlicensed may be employed as an RN.

2. Licensed Practical Nurses (LPN). The facility shall employ or contract with LPNs to meet the nursing needs of the clients.

a. LPNs may administer medication and deliver nursing services as provided by Louisiana law or applicable regulation.

b. All LPNs must be licensed by, and in good standing with, the state of Louisiana, and must comply with all requirements, including continuing education, as established by law or regulation. No individual who is unlicensed may be employed as an LPN.

3. The ARCP must have available a sufficient number of nursing service personnel consisting of a registered nurse and licensed practical nurses to provide nursing care to all residents in accordance with resident care to meet scheduled and unscheduled needs.

C. Essential Personnel

1. In general, an ARCP must ensure an adequate number of trained staff to meet the needs of the clients, including licensing nursing staff as necessary to meet the nursing needs of the clients.

2. Designated Recreational/Activity Staff. There shall be an individual designated to organize and oversee the recreational and social programs of the facility.

3. Direct Care Staff. Direct care staff may include nurses, certified nursing assistants, direct care workers, social workers, activities personnel, or other staff who clearly provide direct care services to residents on a regular basis. A direct care staff person who is not in the facility, but who is on call, shall not be included as direct care staff on any shift.

a. The ARCP shall demonstrate that sufficient direct care staff is scheduled and available (working) to meet the 24-hour scheduled and unscheduled needs of the residents.

b. Staff cannot fill two staff positions on the same shift at different licensed facilities.

c. The ARCP shall maintain a current work schedule for all employees, including relief workers, showing adequate coverage for each day and night.

4. Billing/Office Personnel. If the ARCP facility is part of a campus, billing and accounting office personnel may be shared among the separate facilities.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2598 (December 2008).

§6867. Staff Training

A. All administrators must maintain 12 continuing education units per year. Topics shall include, but shall not be limited to:

1. geriatrics;
2. assisted living concepts;
3. specialty training in the population served; and/or

4. supervisory/management techniques.

B. All staff shall receive the necessary training to assure that they are competent to perform the duties that are assigned to them. All staff shall receive any specialized training as required by law.

C. An ARCP shall ensure that all direct care staff complete face-to-face training to ensure continuing competence. The training must be relevant to the population served and address areas of weakness as determined by the workers' performance reviews, and may address the special needs of residents.

1. Orientation and normal supervision shall not be considered for meeting this requirement on an annual basis.

D. Orientation for direct care staff shall include an additional five days of supervised training.

1. Training, at a minimum, shall include the following:

a. training on resident care services (ADLs & IADLs) provided by the facility;

b. infection control to include blood borne pathogens;

c. any specialized training to meet residents' needs; and

d. any specialized training required by law.

2. A new employee shall not be given sole responsibility for the implementation of a client's program plan until this training is completed.

3. All direct care staff shall receive certification in adult first aid and CPR within the first 30 days of employment.

4. The employee shall sign a statement of understanding certifying that such training has occurred.

E. Annual Training

1. A provider shall ensure that each direct care worker participates in in-service training each year. The training shall be relevant to the population served and address areas of weakness as determined by the worker's performance reviews and may address the special needs of residents.

a. Normal supervision shall not be considered for meeting this requirement.

2. The provider shall document that direct care staff receive training on an annual basis in:

a. the facility's policies and procedures;

b. emergency and evacuation procedures;

c. resident's rights;

d. procedures and legal requirements concerning the reporting of abuse and critical incidents;

e. resident care services (ADLs & IADLs);

f. infection control to include blood borne pathogens; and

g. any specialized training to meet residents' needs.

3. All direct care staff shall have documentation of current certification in first aid and CPR.

4. The staff member shall sign a statement certifying that such training has occurred.

5. Orientation and five days of supervised training may qualify as the first year's annual training requirements.

F. All staff and facility contracted providers having direct contact with residents, as well as all food service personnel, shall receive orientation and training on the following topics within seven calendar days of hire:

1. building safety and emergency measures, including safe operation of fire extinguishers and evacuation of residents from the building;

2. emergency preparedness procedures;
3. sanitation and food safety;
4. resident health and related problems;
5. general overview of the job's specific requirements;
6. philosophy and principles of independent living in an adult residential care residence;
7. residents' Bill of Rights;
8. restraint policies and procedures; and
9. abuse and neglect reporting;

G. Third-Party Providers

1. A general facility orientation and review of house rules is required to be provided for third-party providers entering the building to serve residents.

H. General Emergency Preparedness Training

1. All employees shall be trained in procedures to be followed in the event of any emergency situations. All employees shall be instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter. The ARCP shall instruct all employees on the emergency evacuation procedures. The ARCP shall review the procedures with existing staff at least once in each 12-month period.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2599 (December 2008).

§6869. Record Keeping

A. Administrative Records. The ARCP shall have an administrative record that includes:

1. the articles of incorporation or certified copies thereof, if incorporated, bylaws, operating agreements, or partnership documents, if applicable;
2. the written policies and procedures approved by the owner/governing body that address the requirements listed in this Subchapter;
3. the minutes of formal governing body meetings;
4. the organizational chart of the ARCP;
5. all leases, contracts, and purchase of service agreements to which the ARCP is a party, which includes all appropriate credentials;
6. insurance policies; and
7. copies of incident/accident reports.

B. Personnel Records. An ARCP shall maintain a personnel record for each employee. At a minimum, this file shall contain the following:

1. the application for employment, including the resume of education, training, and experience, if applicable;
2. a criminal history check, prior to an offer of employment, in accordance with state law;
3. evidence of applicable professional or paraprofessional credentials/certifications according to state law;
4. documentation of any state or federally required medical examinations or medical testing;
5. employee's hire and termination dates;
6. documentation of orientation and annual training of staff;
7. documentation of driver's license (if driving or transporting residents);
8. documentation of reference checks; and
9. annual performance evaluations.

a. An employee's annual performance evaluation shall include his/her interaction with residents, family, and other providers.

C. Resident Case Records. An ARCP shall maintain a separate record for each resident. Such record shall be current and complete and shall be maintained in the facility in which the resident resides and readily available to facility staff and department staff. Each record shall contain at least the following information:

1. resident's name, marital status, date of birth, sex, Social Security number, and previous home address;
2. dates of admission and discharge;
3. names, addresses, and telephone numbers of personal representative to be notified in case of accident, death, or other emergency;
4. name, address, and telephone number of a physician and dentist to be called in an emergency;
5. ambulatory status;
6. resident's plan/authorization for routine and emergency medical care;
7. the pre-admission appraisal and admission agreement;
8. reports of assessment and of any special problems or precautions;
9. individual service plan, updates, and quarterly reviews;
10. continuing record of any illness, injury, or medical or dental care when it impacts the resident's ability to function or impacts the services he or she needs;
11. a record of all personal property and funds which the resident has entrusted to the facility;
12. reports of any resident complaints or grievances and the conclusion or disposition of these reports;
13. written acknowledgment that the resident has received clear verbal explanation and copies of his/her rights, the house rules, written procedures for safekeeping of his/her valuable personal possessions, written statement explaining the his/her rights regarding personal funds, and the right to examine his/her record; and
14. the following discharge information:
 - a. date of discharge;
 - b. destination; and
 - c. reason(s) for discharge.

D. Maintenance and Storage of Records. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws. An ARCP shall have sufficient space, facilities, and supplies for providing effective storage of records. The facility must maintain the resident's records in the following manner.

1. Each resident shall have the right to inspect his or her records during normal business hours in accordance with state and federal law.
2. The facility must not disclose any resident records maintained by the facility to any person or agency other than the facility personnel, law enforcement, the department, or the attorney general's office, except upon expressed written consent of the resident or his or her legal representative, or when disclosure is required by state or federal law or regulations.
3. The facility must maintain the original records in an accessible manner for a period of five years following the death or discharge of a resident.

4. The original resident records, while the resident lives at the facility, shall be kept on the facility premises at all times, unless removed pursuant to subpoena.

5. In the event of a change of ownership, the resident records shall remain with the facility.

6. If the facility closes, the owner of the facility within the state of Louisiana shall store the resident records for five years.

7. The facility shall take reasonable actions to protect the resident records from destruction, loss, or unauthorized use.

E. Confidentiality and Security of Records

1. The ARCP shall have written procedures for the maintenance and security of records specifying:

- a. who shall supervise the maintenance of records;
- b. who shall have custody of records; and
- c. to whom records may be released.

2. The facility shall safeguard clinical record information against loss, destruction, or unauthorized use.

3. The ARCP shall ensure the confidentiality of all resident records, including information in a computerized record system, except when release is required by transfer to another health care institution, law, third-party payment contractor, or the resident. Information from, or copies of, records may be released only to authorized individuals, and the ARCP must ensure that unauthorized individuals cannot gain access to or alter resident records.

4. Employees of the facility shall not disclose or knowingly permit the disclosure of any information concerning the resident or his/her family, directly or indirectly, to any unauthorized person.

5. The ARCP shall obtain the resident's, and personal representative's written, informed permission prior to releasing any information from which the resident or his/her family might be identified, except to the department. Identification information may be given to appropriate authorities in case of an emergency.

6. The ARCP may use material from records for teaching and research purposes if names are deleted and other identifying information is disguised or deleted.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2600 (December 2008).

§6871. Incident and Accident Reports

A. An ARCP shall have written procedures for the reporting and documentation of accidents, incidents and other situations or circumstances affecting the health, safety or well-being of a resident or residents.

B. An ARCP shall report to the department any incidents suspected of involving:

1. abuse;
2. neglect;
3. misappropriation of personal property; or
4. injuries of unknown origin.

a. Injuries of unknown origin are defined as:

i. the source of the injury was not observed by any person or the source of the injury could not be explained by the resident; and/or

ii. the injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma).

C. The initial report of the incident or accident is due within 24 hours of occurrence or discovery of the incident.

D. After submission of the 24-hour report, if additional time is needed to complete the investigation, a final report must be submitted within five working days regardless of the outcome.

E. Incident/Accident Report. When and if an incident occurs, a detailed report of the incident shall be made. As a minimum, the incident report shall contain the following:

1. circumstances under which the incident occurred;
2. date and time the incident occurred;
3. where the incident occurred (bathroom, unit, room, street, lawn, etc);
4. immediate treatment and follow-up care;
5. name and address of witnesses;
6. date and time family or representative was notified;
7. symptoms of pain and injury discussed with the physician; and
8. signatures of the staff completing the report and administrator.

F. When an incident results in death of a resident, involves abuse or neglect of a resident, or entails any serious threat to the resident's health, safety or well-being, an ARC administrator or designee shall:

1. immediately report verbally to the administrator and submit a preliminary written report within 24 hours of the incident to the department;

2. immediately notify DHH-Adult Protection Services, DHH/HSS, and other appropriate authorities, according to state law, in addition submit a written notification to the above agencies within twenty-four hours of the suspected incident;

3. immediately notify the family or representative of the resident, in addition, submit a written notification within 24 hours;

4. immediately notify the appropriate law enforcement authority in accordance with state law;

5. take appropriate corrective action to prevent future incidents and provide follow-up written report to all the above persons and agencies; and

6. the ARCP shall document its compliance with all of the above procedures for each incident, and shall keep such documentation (including any written reports or notifications) in the resident's file. A separate copy of all such documentation shall be kept in the provider's administrative file.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2601 (December 2008).

§6873. Compliance with Alzheimer's Special Care Disclosure Law

A. Any ARCP which offers to provide a special program for persons with alzheimer's disease or a related disorder by means of an alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes it as being especially applicable to or suitable for such persons.

1. Disclosure shall be made to the department and to any person seeking ASCU placement on behalf of a person with alzheimer's disease or a related disorder.

2. Information disclosed shall explain additional care provided in each of the following areas:

- a. philosophy and mission;

- b. pre-admission criteria;
- c. admission and discharge criteria;
- d. assessment;
- e. care planning and implementation;
- f. staffing patterns and training;
- g. physical environment;
- h. resident activities;
- i. family role in care; and
- j. program fees.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2601 (December 2008).

Subchapter G. Emergency Preparedness

§6875. Emergency Preparedness Plan

A. The ARCP shall have an emergency preparedness plan designed to manage the consequences of medical emergencies, power failures, fire, natural disasters, declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its emergency preparedness plan in the event or occurrence of a disaster or emergency.

B. Upon the department's request, a facility shall present its emergency preparedness plan for review. At a minimum, the emergency preparedness plan shall include and address the following:

1. The emergency preparedness plan shall be individualized and site specific. All information contained in the plan shall be current and correct. The plan shall be made available to representatives of the Office of the State Fire Marshal and the Office of Public Health upon request of either of these offices. The facility's plan shall follow all current applicable laws, standards, rules or regulations.

2. The facility's plan shall be submitted to the parish or local Office of Homeland Security and Emergency Preparedness (OHSEP) yearly and verification of this submittal maintained in the plan. Any recommendations by the parish or local OHSEP regarding the facility's plan shall be documented and addressed by the ARCP.

3. The facility's plan shall contain census information, including transportation requirements for the ARCP residents as to the need for:

- a. wheelchair accessible or para-transit vehicle transport; or
- b. the numbers of ARCP residents that do not have any special transport needs.

4. The plan shall contain a clearly labeled and legible master floor plan(s) that indicate the following:

- a. the areas in the facility, either in the resident's individual unit or apartment or the ARCP facility, that is to be used by residents as shelter or safe zones during emergencies;
- b. the location of emergency power outlets (if none are powered or all are powered, this shall be stated on the plan);
- c. the locations of posted, accessible, emergency information;
- d. the plan shall provide for floor plans or diagrams to be posted in each resident's room and shall clearly indicate that specific room or apartment's location, the fire exits, the fire evacuation routes, locations of alarm boxes

and fire extinguishers, and written fire evacuation procedures shall be included on one plan; and

i. A separate floor plan or diagram with safe zones or sheltering areas for non fire emergencies shall indicate areas of building, apartments, or rooms that are designated as safe or sheltering areas;

e. the detail of what will be powered by emergency generator(s), if applicable.

C. The facility's plan shall be viable and promote the health, safety and welfare of the facility's residents. If the plan is found to be deficient the facility shall, within 10 days of notification, respond with an acceptable plan of correction to amend its emergency preparedness plan.

D. The facility will work in concert with the local OHSEP or Office of Emergency Preparedness (OEP) in developing plans.

E. The facility shall provide a plan for monitoring weather warnings and watches and evacuation orders from local and state emergency preparedness officials. This plan will include:

- 1. who will monitor;
- 2. what equipment will be used; and
- 3. procedures for notifying the administrator or responsible persons.

F. The plan shall provide for the delivery of essential care and services to residents during emergencies, who are housed in the facility or by the facility at another location, during an emergency.

G. The plan shall contain information about staffing when the ARCP is sheltering in place or when there is an evacuation of the ARCP. Planning shall include documentation of staff that have agreed to work during an emergency and contact information for such staff. The plan shall include provisions for adequate, qualified staff as well as provisions for the assignment of responsibilities and duties to staff.

H. The facility shall have transportation or arrangements for transportation for evacuation, hospitalization, or any other services which are appropriate. Transportation or arrangements for transportation shall be adequate for the current census and meet the ambulatory needs of the residents.

I. The plan shall include procedures to notify the resident's family or responsible representative whether the facility is sheltering in place or evacuating to another site. The plan shall include which staff is responsible for providing this notification. If the facility evacuates, notification shall include:

- 1. the date and approximate time that the facility is evacuating;
- 2. the place or location to which the facility is evacuating, including the:
 - a. name;
 - b. address; and
 - c. telephone number;

J. The plan shall include the procedure or method whereby each facility resident has a manner of identification attached to his person which remains with him at all times in the event of sheltering in place or evacuation, and whose duty and responsibility this will be. The following minimum information shall be included with the resident:

- 1. current and active diagnosis;

2. medications, including dosage and times administered;
3. allergies;
4. special dietary needs or restrictions; and
5. next of kin or responsible person and contact information.

K. The plan shall include an evaluation of the building and necessary systems to determine the ability to withstand wind, flood, and other local hazards that may affect the facility. If applicable, the plan shall also include an evaluation of each generator's fuel source(s), including refueling plans and fuel consumption.

L. The plan shall include an evaluation of the facility's surroundings to determine lay-down hazards, objects that could fall on the facility, and hazardous materials in or around the facility, such as:

1. trees;
2. towers;
3. storage tanks;
4. other buildings;
5. pipe lines;
6. chemicals;
7. fuels; or
8. biologics.

M. For ARCPs that are geographically located south of Interstate 10 or Interstate 12, the plan shall include the determinations of when the facility will shelter in place and when the facility will evacuate for a hurricane and the conditions that guide these determinations.

1. A facility is considered to be sheltering in place for a storm if the facility elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength or a stronger storm.

NOTE: Tropical storm strength shall be defined as a tropical cyclone in which the maximum sustained surface windspeed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph, 17.5 m/s) to 63 kt (73 mph, 32.5 m/s).

2. If sheltering in place, the facility has elected to take this action after reviewing all available and required information on the storm, the facility, the facility's surroundings, and consultation with the local or parish OHSEP.

3. The facility accepts all responsibility for the health and well-being of all residents that shelter with the facility before, during, and after the storm. In making the decision to shelter in place or evacuate, the facility shall consider the following:

- a. what conditions will the facility shelter for;
- b. what conditions will the facility close or evacuate for; and
- c. when will these decisions be made.

4. If the facility shelters in place, the facility's plan shall include provisions for seven days of necessary supplies to be provided by the facility prior to the emergency event, to include:

- a. drinking water or fluids; and
- b. non-perishable food.

N. The facility's emergency plan shall include a posted communications plan for contacting emergency services and monitoring emergency broadcasts and whose duty and responsibility this will be.

O. The facility's plan shall include how the ARCP will notify OHSEP and DHH when the decision is made to

shelter in place and whose responsibility it is to provide this notification.

P. The facility shall have a plan for an on-going safety program to include:

1. continuous inspection of the facility for possible hazards;
2. continuous monitoring of safety equipment and maintenance or repair when needed;
3. investigation and documentation of all accidents or emergencies;
4. fire control and evacuation planning with documentation of all emergency drills;
 - a. residents can be informed of emergency drills;
5. all aspects of the facility's plan, planning, and drills shall meet the current requirements of the office of the State Fire Marshal, and the Life Safety Code National Fire Protection Association (NFPA) 101; and

6. the facility shall inform the resident and/or responsible party of the facility's emergency plan and the actions to be taken.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2602 (December 2008).

§6877. Emergency Plan Activation, Review and Summary

A. The facility's emergency plan(s) shall be activated at least annually, either in response to an emergency or in a planned drill. All staff shall be trained and have knowledge of the emergency plan.

B. ARCPs must conduct a minimum of 12 fire drills annually with at least one every three months on each shift. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, and other natural disasters.

1. All staff shall participate in at least one drill annually. Residents shall be encouraged to participate, but the provider may not infringe upon the right of the resident to refuse to participate.

2. The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

3. Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable NFPA requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

C. The facility's performance during the activation of the plan shall be evaluated annually by the facility and the findings shall be documented in the plan.

D. The plan shall be revised if indicated by the facility's performance during the emergency event or the planned drill.

1. Updates, amendments, modifications, or changes that are required or found days. Clearly mark, remove, make note of, or delete parts of the plan that are outdated or no longer in use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:216361-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2603 (December 2008).

§6879. Notification

A. Emergency preparedness procedures shall specify the following:

1. persons to be notified;
 2. process of notification;
 3. verification of notification;
 4. locations of emergency equipment and alarm signals;
 5. evacuation routes;
 6. procedures for evacuating residents;
 7. procedures for re-entry and recovery;
 8. frequency of fire drills;
 9. tasks and responsibilities assigned to all personnel;
- and
10. medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

B. An ARCP shall immediately notify the department and other appropriate agencies of any fire, disaster or other emergency that may present a danger to residents or require their evacuation from the facility.

C. In the event that an ARCP evacuates, temporarily relocates or temporarily ceases operations at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP, the ARCP must immediately give notice to the Health Standards Section and OHSEP by facsimile or email of the following:

1. the date and approximate time of the evacuation;
- and
2. the locations of where the residents have been placed, whether this location is a host site for one or more of the ARCP residents.

D. In the event that an ARCP evacuates, temporarily relocates or temporarily ceases operations at its licensed location for any reason other than an evacuation order, the ARCP must immediately give notice to the Health Standards Section by facsimile or email of the following:

1. the date and approximate time of the evacuation;
- and
2. the locations of where the residents have been placed, whether this location is a host site for one or more of the ARCP residents.

E. If there are any deviations or changes made to the locations of the residents that was given to the Health Standards Section and OHSEP, then both Health Standards and OHSEP shall be notified of the changes within 48 hours of their occurrence.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2604 (December 2008).

§6881. Authority to Re-open After an Evacuation, Temporary Relocation or Temporary Cessation of Operation

A. In the event that an ARCP evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the

state, local, or parish OHSEP, due to a declared disaster or other emergency, and that facility sustains damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Health Standards Section, and the facility has received a letter of approval from the department for reopening the facility.

1. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

B. If an ARCP evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state or parish OHSEP, due to a declared disaster or other emergency, and the facility does not sustain damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility may be reopened without the necessity of the required surveys.

1. Prior to reopening, the facility shall notify the Health Standards Section in writing that the facility is reopening.

C. The facility shall submit a written initial summary report to the department's Health Standards Section. This report shall be submitted within 14 days from the date of the emergency event which led to the facility having to evacuate, temporarily relocate or temporarily cease operations. The report shall indicate how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of the injuries and deaths.

D. If a facility shelters in place at its licensed location during a declared disaster or other emergency, the facility shall submit a written initial summary report to the department's Health Standards Section. This report shall be submitted within 14 days from the date of the emergency event which led to the facility having to shelter in place. The report shall indicate how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

E. Upon request by the department's Health Standards Section, a report that is more specific and detailed regarding the facility's execution of their emergency plan shall be submitted to the department.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2604 (December 2008).

Subchapter H. Physical Environment

§6885. General Requirements and Authority

A. The standards in this subchapter shall apply to newly constructed ARCPs or alterations, additions or renovations to an existing ARCP or to an existing building to create an ARCP.

B. An ARCP shall submit architectural plans to DHH-Division of Engineering and Architectural Services and the Office of the State Fire Marshal. The regulations and codes governing new facilities also apply if and when the facility proposes to begin operation in a building not previously and continuously used as a facility licensed under these regulations.

C. Construction documents (plans and specifications) are required to be submitted and approved by both the Louisiana State Fire Marshal and the department as a part of the licensing procedure and prior to obtaining a license.

1. Procedures for submission of construction documents are as follows.

a. One set of the final construction documents shall be submitted to the Louisiana State Fire Marshal for approval. The Fire Marshal's letter of approval and final inspection shall be sent to DHH Division of Engineering & Architectural Services.

b. One set of the final construction documents (plans and specifications) shall be submitted to the Louisiana Department of Health and Hospitals, Division of Engineering and Architectural Services, along with the appropriate review fee, and a "plan review application form" for approval.

2. Applicable Projects. Construction documents (plans and specifications) are required to be approved for the following type projects:

- a. new construction of an ARCP;
- b. renovation of an existing building to be licensed as an ARCPs; and
- c. major alterations or additions to an existing ARCP.

3. Design Criteria. The project shall be designed in accordance with the following criteria:

- a. The Guidelines for Design and Construction of Health Care Facilities, current edition, published by the American Institute of Architects;
- b. the current edition of NFPA 101—Life Safety Code; and
- c. the current edition of the Standard Plumbing Code;
- d. the Americans with Disabilities Act—Accessibility Guidelines for Buildings and Facilities (ADAAG), September 1998 edition;
- e. the current Louisiana Department of Health and Hospitals licensing regulations for adult residential care providers.

4. Preparation of Construction Documents

a. Construction documents (plans and specifications) for submission to the department shall be prepared only by a Louisiana Licensed Architect or qualified licensed engineer as governed by the Licensing Laws of the State of Louisiana for the type of work to be performed.

b. Construction documents submitted shall be of an architectural or engineering nature, and thoroughly illustrate the project through accurately drawn, dimensioned, and noted plans, details, schedules, and specifications. At a minimum the following shall be submitted:

- i. site plan(s);
- ii. floor plan(s) including architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler, and fire alarm plans;
- iii. building elevations;
- iv. room finish, door, & window schedules;
- v. details pertaining to ADA requirements;
- vi. specifications for materials; and
- vii. an additional set of basic preliminary type, legible site plan and floor plans in either 8 1/2" x 11"; 8 1/2" x 14" or 11" x 17" format. (These are for use by DHH in doing the final inspection of the facility and should include legible room names).

c. In the event that submitted materials do not appear to satisfactorily comply with the "Design Criteria" as outlined above, the DHH Division of Engineering and Architectural Services shall furnish a letter to the party submitting the application for review, which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

D. Waivers. The secretary of the department may, within his sole discretion, grant waivers to building and construction guidelines. The secretary, in exercising his discretion, must at a minimum, require the applicant to comply with the edition of the building and construction guidelines which immediately preceded the most current edition of the Guidelines for Design and Construction of Health Care Facilities. Requests for waivers are considered on the following basis.

1. The facility shall demonstrate how resident safety and the maintenance of a homelike environment is not compromised.

2. No waiver shall be approved that results in an ARCP that is not physically distinct from any residential care facility, nursing home or hospital to which it is attached or of which it is a part.

3. No waiver shall be approved which results in living units that do not provide all required physical features and/or does not provide sufficient space to permit residents to carry out, with or without assistance, all the functions necessary for independent living within the provisions of the residential living unit guidelines.

4. The facility must demonstrate their ability to completely fulfill all other requirements of the service.

5. The department will make a written determination of the request.

6. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances to the waiver.

E. All facilities licensed under these regulations shall be designed and constructed to substantially comply with pertinent local and state laws, codes, ordinances and standards. All new construction shall be in accordance with Louisiana Uniform Construction Code in effect at the time of original licensure, except that:

1. All exit corridors shall be no less than six feet wide, and shall be clear of obstructions;

2. Exit doors from patient or resident rooms shall be no less than 36 inches wide; and

3. Doors shall, at a minimum, meet or exceed the fire ratings specified for I-2 Group construction under the International Building Code (IBC) 2000. The approved fire rating of the door constructed in accordance with IBC requirements, and not door construction types, such as hollow or solid-core shall determine compliance with this requirement.

F. The facility shall develop and shall comply with a written evacuation plan approved by the state and local fire marshal.

G. In addition to compliance with the Louisiana Uniform Construction Code, all construction shall comply with the requirements of the American Disability Act (ADA).

H. Mixed-use occupancy shall not be permitted in buildings classified as industrial, commercial/retail, high hazard, or other type of restricted use.

I. Practices that create an increased risk of fire are prohibited. This includes, but is not limited to:

1. space heaters; (In cases of emergency, such as extended power loss during periods of cold weather, space heaters are permitted upon the approval of the department.);

2. the accumulation or storage within the facility of combustible materials such as rags, paper items, gasoline, kerosene, paint or paint thinners;

3. the use of candles, oil lamps, incense or open-flamed items;

4. the use of extension cords or multi-plug adapters for electrical outlets.

a. Facilities may utilize transient voltage surge protectors or surge suppressors with microprocessor electronic equipment such as computers or CD/DVD recorders or players. Any transient voltage surge protectors or surge suppressors must have a maximum UL rating of 330v and must have a functioning protection indicator light.

b. Facilities may not use transient voltage surge protectors or surge suppressors that do not function completely or the protection indicator light does not work.

J. Safety Standards

1. Facilities may elect to prohibit smoking in the facility or on the grounds or both. If a facility elects to permit smoking in the facility or on the grounds, the facility shall include the following minimal provisions, and the facility shall ensure that:

a. In facilities equipped with sprinkler systems, the facility may designate a smoking area or areas within the facility. The designated area or areas shall have a ventilation system that is separate from the ventilation system for non-smoking areas of the facility. Facilities lacking a sprinkler system are prohibited from designating smoking areas within the facility.

b. Smoking shall be prohibited in any room or compartment where flammable liquids, combustible gases or oxygen is used or stored and in other hazardous location and
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any general use/common areas of the adult residential care provider facility. Such areas shall be posted with "no smoking" signs.

c. Smoking by residents classified as not capable of doing so without assistance shall be prohibited unless the resident is under direct supervision.

d. Ashtrays of noncombustible material and safe design shall be placed in all areas where smoking is permitted.

e. Metal containers with self-closing cover devices into which ashtrays may be emptied shall be placed in all areas where smoking is permitted.

K. Kitchen/Food Service

1. The facility shall have appropriately furnished dining room(s) that can accommodate residents in a comfortable dining environment. Dining room(s) may be sized to accommodate residents in either one or two settings.

a. The facility shall have a central or a warming kitchen.

b. The kitchen and food preparation area shall be well lighted, ventilated, and located apart from other areas, which could occasion food contamination.

c. All kitchens and dining facilities shall be adequate to serve the number of residents residing in the facility and shall meet all applicable sanitation and safety standards.

d. Each facility shall comply with all applicable regulations relating to food service for sanitation, safety, and health as set forth by state, county, and local health departments.

e. An adequate supply of eating utensils (e.g., cups, saucers, plates, glasses, bowls, and flatware) will be maintained in the facility's kitchen to meet the needs of the communal dining program. An adequate number of pots and pans shall be provided for preparing meals. Eating utensils shall be free of chips or cracks.

f. Each ARCP shall have adequate refrigeration and storage space. An adequately sized storage room shall be provided with adequate shelving. The storage room shall be constructed to prevent the invasion of rodents, insects, sewage, water leakage or any other contamination. The bottom shelf shall be of sufficient height from the floor to allow cleaning of the area underneath the bottom shelf.

g. All newly constructed adult residential care providers will have a commercial grade kitchen.

h. All converted adult residential care providers can opt out of having a commercial grade kitchen as part of the licensed facility in order to have meals prepared in an offsite location or within the facility if the facility is converting a separate and distinct wing. Facilities opting out must have a kitchen area to hold, warm and serve food if food is prepared at an off-site location. This kitchen area must meet the Louisiana Sanitary Code requirements for food safety and handling. Meals and snacks provided by the ARCP but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health regulations concerning the preparation and serving of food. This requirement does not exempt facilities from meeting dining room space that is separate and distinct as referenced above in physical separation standards.

i. In facilities that have commercial kitchens with automatic extinguishers in the range hood, the portable five pound fire extinguisher must be compatible with the

chemicals used in the range hood extinguisher. The manufacturer recommendations shall be followed.

j. Food scraps shall be placed in garbage cans with airtight fitting lids and bag liners. Garbage cans shall be emptied as necessary, as but no less than daily.

L. Laundry/Housekeeping

1. Each ARCP shall have laundering facilities unless commercial laundries are used. The laundry shall be located in a specifically designed area that is physically separate and distinct from residents' rooms and from areas used for dining and food preparation and service. There shall be adequate rooms and spaces for sorting, processing and storage of soiled material. Laundry rooms shall not open directly into resident care area or food service area.

2. Domestic washers and dryers for the use by residents may be provided in resident areas provided they are installed in such a manner that they do not cause a sanitation problem or offensive odors.

3. Laundry dryers shall be properly vented to the outside.

4. The laundry room shall be well lighted and vented to the outside by either power vents, gravity vents or by outside windows.

5. Supplies and equipment used for housekeeping will be stored in a separate locked room. All hazardous chemicals will be stored in compliance with OPH.

M. Lighting

1. Sufficient lighting shall be provided for general lighting and reading in residential units and common areas.

2. Night-lights for corridors, emergency situations and the exterior shall be provided as needed for security and safety.

N. HVAC/Ventilation

1. The facility shall provide safe HVAC systems sufficient to maintain comfortable temperatures with a minimum of 65 degrees and maximum 80 degrees Fahrenheit in all indoor public and private areas in all seasons of the year. During warm weather conditions, the temperature within the facility shall not exceed 80 degrees Fahrenheit.

2. All gas-heating units must bear the stamp of approval of the American Gas Association Testing Laboratories, Inc. or other nationally recognized testing agency for enclosed, vented heaters for the type of fuel used.

3. All gas heating units and water heaters must be vented adequately to carry the products of combustion to the outside atmosphere. Vents must be constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with the American Gas Association recommended procedures.

4. All heating units must be provided with a sufficient supply of outside air so as to support combustion without depletion of the air in the occupied room.

5. The use of portable heaters by the facility and residents is strictly prohibited.

6. The facility shall provide for and operate adequate ventilation in all areas used by residents. In new facilities licensed after the effective date of these regulations, the facility must provide each apartment or unit with an individual thermostat controlling the temperature in that apartment or unit. In addition, the facility must provide a heating, ventilating and air conditioning (HVAC) system(s) for the apartments or units and common areas capable of

maintaining any temperature between 68 and 80 degrees at any time throughout the year.

7. Filters for heaters and air conditioners shall be provided as needed and maintained in accordance with manufacturer's specifications.

O. Water Supply

1. An adequate supply of water, under pressure, must be provided at all times.

2. When a public water system is available, a connection must be made thereto. If water from a source other than a public water supply is used, the supply must meet the requirements set forth under rules and regulations of the Office of Public Health (OPH).

3. A contract to supply potable water shall be implemented with a third party not associated with the operation of the adult residential care provider facility in the event the facility's water supply should be interrupted.

P. Sewage

1. All sewage must be disposed of by means of either:
a. a public system where one is accessible within 300 feet; or

b. an approved sewage disposal system that is constructed and operated in conformance with the standards established for such systems by the OPH.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2605 (December 2008).

§6887. Physical Appearance and Conditions

A. An ARCP shall ensure that all structures of the grounds of the facility shall be accessible to residents are maintained in good repair and are free from any excessive hazard to health and safety.

B. The site shall be adequate to accommodate roads and walks within the lot lines to at least the main entrance, ambulance entrance, and service entrance. An accessible outdoor recreation area is required and must be made available to all residents and include walkways suitable for walking and benches for resting. Lighting must be equal to a minimum of five foot-candles. All facility sites shall contain enough exterior square footage equal to at least half of the common area square footage as contained in the building for walks, drives and lawn space.

C. Facilities must have an entry and exit drive to and from the main building entrance that will allow for picking up and dropping off residents and for mail deliveries. There should be a covered area at the entrance to the building to afford residents protection from the weather.

D. A provider shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.

E. Areas determined to be unsafe, including but not limited to steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced off or have natural barriers to protect residents.

F. Fences shall be in good repair.

G. If facility chooses to store generator within the exterior space, it shall be fenced off or have natural barriers to protect residents.

H. Waste Removal and Pest Control

1. Garbage and rubbish that is stored outside shall be stored securely in covered containers and shall be removed on a regular basis.

2. Trash collection receptacles and incinerators shall be separate from outdoor recreational space and located as to avoid being a nuisance to neighbors.

3. The ARCP shall have an effective pest control program through a pest control contract.

I. Signage

1. The facility's address and name shall be displayed so as to be easily visible from the street.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2607 (December 2008).

§6889. Resident General Use/Common Areas

A. Residents of the ARCP shall have access to the outdoors for recreational use. The parking lot shall not double as recreational space.

1. If a provider accepts residents that have dementia or other conditions that may cause them to leave or walk away from the home/facility, an enclosed area shall be provided adjacent to the home/facility so that the residents may go outside safely. This area shall allow for at least 60 square feet per resident.

B. Distinct Part Facilities

1. Physical and Programmatic Separation. An ARCP shall be both physically and programmatically distinct from any nursing home or hospital to which it is attached or of which it is a part. ARCPs shall comply with R.S. 40:2007 with reference to facilities within facilities.

2. Physical separation. If more than one business occupies the same building, premises, or physical location, the ARCP shall have its own entrance. This separate entrance shall not be accessed solely through another business or health care provider. This separate entrance shall have appropriate signage and shall be clearly identifiable as belonging to the ARCP.

C. Each ARCP shall meet the following requirements for resident general use/common areas.

1. Each facility shall have dining room and living room space easily accessible to all residents.

2. Common dining rooms and living rooms shall not be used as bedrooms.

3. Dining rooms shall be furnished with enough dining tables and chairs to permit all residents to be seated, or to permit one-half of the resident census to be seated at one time and allowing facilities to provide dining schedules that allow two settings per meal.

4. Dining rooms and living rooms shall be available for use by residents at appropriate times to provide periods of social diversion and individual or group activities.

5. The facility shall provide public restrooms of sufficient number and located in close proximity to common and leisure areas to meet the needs of residents, staff and visitors to the facility and shall be located in areas other than the resident's apartment or unit.

6. All resident areas shall be painted and appropriately furnished.

7. Facilities in buildings constructed after the effective date of these regulations shall be constructed with hallways/corridors a minimum of six feet wide to allow two wheelchairs to pass each other.

8. Facilities in existing buildings that have not undergone substantial renovation since the effective date of

these regulations shall have corridors large enough to meet current egress requirements mandated by applicable codes.

9. A minimum of one phone jack or equivalent technology (i.e. wireless internet or cable) shall be available in each resident's apartment or unit for the resident to establish private phone service in his or her name. In addition, there shall be, at a minimum, one dedicated facility phone and phone line for every 40 residents in common areas. The phone shall allow unlimited local calling without charge. Long distance calling shall be possible at the expense of the resident or personal representative via personal calling card, pre-paid phone card, or similar methods. Residents shall be able to make phone calls in private. *Private* can be defined as placing the phone in an area that is secluded and away from frequently used areas.

10. Facility's laundry services area(s) shall meet the requirements outlined in these provisions.

11. Facility's medication storage area(s) shall meet the requirements outlined in these provisions.

12. Square footage requirements for common area living room, dining room, and activities room are as follows.

a. Living and activity spaces shall be separate from the dining room with a combined total square footage of at least 60 square feet per resident. Living and activity spaces do not include corridors and lobby areas for the purposes of calculation. Living and activity spaces may be combined.

b. The facility shall have at least 20 square feet of designated dining space per resident if dining will be conducted in one seating. If dining will be conducted in two seatings, 10 square feet per resident will be required. Facilities will document their dining seating plan, and maintain the documentation for review by the department.

c. In facilities that house residents in more than one building, there shall be a living room and/or activities room located in each building with at least 10 square feet per licensed resident with an additional 10 square feet available on the campus in a common area. The facility's 10 square feet per licensed resident in the common area shall be distinct from any other square footage requirements for other campus programs.

d. In facilities housing residents in more than one building, a single dining room may be used for the complex. The dining room in multi-building facility shall have at least 20 square feet of space per licensed resident in the facility. If dining will be conducted in two seatings, 15 square feet per resident will be required. Facilities will document their dining seating plan, and maintain the documentation for review by department.

13. In facilities housing residents in more than 1 building, protection from the elements of the weather shall be provided for residents who must access other buildings.

14. Any modification, alternation or addition shall satisfy all physical environment requirements in effect at the time that the modification, alteration, or addition is placed into service and shall meet the requirements of the ADA.

15. A facility shall not share common living, or dining space with another facility licensed to care for individuals on a 24 hour basis.

16. The facility shall provide common areas to allow residents the opportunity for socialization.

17. Dining rooms and leisure areas shall be available for use by residents at appropriate times to provide periods of social and diversified individual and group activities.

18. The facility shall provide public restrooms of sufficient number and location to serve residents and visitors. Public restrooms are located close enough to activity hubs to allow residents with incontinence to participate comfortably in activities and social opportunities.

19. The facility's common areas shall be accessible and maintained to provide a clean, safe and attractive environment for the residents.

20. Leisure common areas shall not be confined to a single room.

21. Space used for administration, sleeping, or passage shall not be considered as dining or leisure space.

22. Wastepaper baskets and trash containers used in the common areas must be metal or approved washable plastic baskets.

23. Living and/or recreational rooms shall be furnished according to the activities offered. Furniture for living rooms and sitting areas shall include comfortable chairs, tables, and lamps of good repair and appearance.

24. The facility shall prominently post the grievance procedure, resident's rights, and abuse and neglect procedures in an area accessible to all residents.

25. During power outages or other emergencies, the facility shall have the ability to generate power to the main common area/space.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2608 (December 2008).

§6891. Residential Living Units

A. General Requirements

1. All living units in adult residential care provider facilities shall be independent apartments. Each apartment or unit shall be at minimum 300 square feet in size and configured to permit residents to carry out, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storing clothing and other personal possessions; doing personal correspondence and paperwork; and entertaining visitors. Each apartment or unit shall be accessible to and useable by residents who use a wheelchair or other mobility aid consistent with the accessibility standards.

2. Privacy of residents shall be maintained in all living units.

B. Physical Features. Each residential unit shall have at least the following.

1. An individual lockable entrance and exit. A single door may serve as both entrance and exit. Keys, code or other opening device for the door(s) to the adult residential care provider facility shall be supplied to all residents without a credible diagnosis of dementia. In situations where a provider feels a resident without a diagnosis of dementia is at risk of injury to themselves if provided with a key, code or other exit device to the facility, a managed risk agreement may be negotiated. All apartments or units shall be accessible by means of a master key or similar system that is available at all times in the facility and for use by designated staff.

2. Each apartment or unit shall have a minimum of 300 square feet.

3. No apartment or unit in an adult residential care provider facility shall be occupied by more than two residents regardless of square footage.

4. Each residential unit shall contain an outside window. Skylights are not acceptable to meet this requirement.

5. In new facilities licensed after the effective date of these regulations, the facility shall provide HVAC thermostats that can be individually controlled by the resident, with a locking mechanism provided, if required, to prevent harm to a resident.

6. Each residential unit shall have a separate and complete bathroom with a toilet, bathtub or shower, and sink. The bathrooms must be ADA accessible, as required by the State Fire Marshal. Roll-in showers are encouraged.

7. The cooking capacity of each residential unit may be removed or disconnected depending on the individual needs of the resident.

8. Each residential unit shall have a call system, either wired or wireless, monitored 24-hours a day by the ARCP.

9. Each apartment or unit shall be equipped for telephone and television cable or central television antenna system.

10. Each residential unit shall have easy access to common areas such as living room(s), activity room(s), dining room(s) and laundry.

11. Each residential unit shall have a kitchen that is a visually and functionally distinct area within the unit.

12. Each residential unit shall have a sleeping and living area that is an area within the apartment or unit but need not be separate rooms.

C. Bedrooms

1. The facility may provide either studio, one or two bedroom or a combination of residential unit sizes based upon the feasibility and market study.

2. The bedroom in each residential unit shall be a visually separate and distinct area.

3. In order to develop a two-bedroom unit, a minimum of 100 square feet must be allowed for the second bedroom.

D. Kitchenettes

1. Each residential unit shall contain, at a minimum, a small refrigerator, a wall cabinet for food storage, a small bar-type sink, and a counter with workspace and electrical outlets, a small cooking appliance, for example, a microwave or a two-burner cook top.

2. If the resident assessments indicate that having a cooking appliance in the living unit endangers the resident, no cooking appliance shall be provided or allowed in the living unit or the cooking appliance may be disconnected.

E. Bathrooms

1. Entrance to a bathroom from one residential unit shall not be through another residential unit.

2. Bathtubs and/or showers should be able to support aging in place, support accessibility for persons with limited mobility and be accessible to wide array of ability levels, including but not limited to, roll in showers, lift assist bathing and side entrance bathtubs.

3. Grab bars and non-skid surfacing or strips shall be installed in all showers and bath areas.

4. Bathrooms shall have floors and walls of impermeable, cleanable, and easily sanitized materials.

5. Resident bathrooms shall not be utilized for storage or purposes other than those indicated by this Subsection.

6. Hot and cold-water faucets shall be easily identifiable and be equipped with scald control.

7. Emergency call system.

F. Storage

1. The facility shall provide adequate portable or permanent closet(s) in the resident's unit for clothing and personal belongings.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2609 (December 2008).

§6893. Furnishings and Equipment

A. The following are general provision care provider must meet.

1. All rooms must have working light switches at the entrance to each room.

2. Windows must be kept clean and in good repair and supplied with curtains, shades or drapes. Each window that can be opened shall have a screen that is clean and in good repair.

3. Light fixtures in resident general use or common areas must be equipped with covers to prevent glare and hazards to the residents.

4. All fans located within seven feet of the floor must be protected by screen guards.

5. Common dining room space and furnishings in good repair must be provided for each resident in the facility. Dining room space and furnishings must be sufficient to serve all residents. Facilities shall be allowed to plan dining schedules to allow for two settings per meal to increase resident's choice of meal times.

6. All furnishings and equipment in common areas must be durable, clean, and appropriate to its functions.

7. All areas of a facility must be well lighted to ensure residents' safety.

8. Throw or scatter rugs, or bath rugs or mats shall have a non-skid backing.

B. Residential Furnishings

1. Furniture. Each facility shall strive to maintain a residential environment and encourage residents to use their own furnishings and supplies. However, if the resident does not have their own furniture, the facility must provide basic furnishings. The basic furnishings for each unit are:

a. a bed unit, including a frame and a clean mattress and pillow;

b. basic furnishings, such as a private dresser or similar storage area for personal belongings that is readily accessible to the resident;

c. a closet, permanent or portable, to store clothing and aids to physical functioning, if any, which is readily accessible to the resident;

d. a minimum of two chairs;

e. a table for dining;

f. window treatments to ensure privacy; and

g. lamp for reading.

2. Linens. Residents may provide their own linens, but may not be required by the facility to do so. The facility must include in the resident's occupancy admission agreement whether the resident or his or her personal representative prefers the facility to provide linens or the resident, resident's family or his or her personal representative will provide his or her own linens, and

whether the facility will launder the linens or the resident, resident's family or his or her personal representative will launder his or her own linens. Linens may be provided by the facility for no cost or may be provided at an extra charge.

a. If the resident, resident's family or his or her personal representative party chooses to utilize facility linens, the following minimum amounts of linen must be available in the facility at all times:

i. sheets—three sets for each resident;

ii. pillow cases—three sets for each resident;

iii. bath towel—three for each resident;

iv. hand towels—three for each resident;

v. washcloths—three for each resident;

vi. blankets—one for each resident; blankets type for the season and the individual resident's comfort; and

vii. pillows—one per resident.

b. If the resident, resident's family or his or her personal representative wishes to use his or her own personal linens, the facility will counsel the resident, resident's family or his or her personal representative on recommended quantities to maintain. In the case where a resident, resident's family or his or her personal representative uses personal linens, the facility is not required to provide or keep available any linen for the resident unless the resident does not have sufficient numbers of personal linens available to maintain clean and sanitary conditions. If this is the case, the facility shall provide additional linens up to the quantities specified above. In both cases, clean linens may be stored in the resident's unit.

c. Bed linens must be changed at least weekly, or as often as needed to ensure clean or non-soiled linens.

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, Office of the Secretary, Bureau of Health Services Financing, LR 34:2610 (December 2008).

Alan Levine
Secretary

0812#080

RULE

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Facility Need Review—Adult Residential Care
(LAC 48:I.Chapter 125)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 48:I.Chapter 125 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116, and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. 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.

Abeyance of Nursing Facility Beds—a situation in which a nursing facility, if it meets certain requirements, may have all (but not only a portion) of its approved beds disenrolled from the Medicaid Program without causing the approval for the beds to be revoked after 120 days.

Adult Residential Care Provider (ARCP)—a facility, agency, institution, society, corporation, partnership, company entity, residence, person or persons, or any other group which provides adult residential care services for compensation for two or more adults who are unrelated to the licensee or operator. Adult residential care includes, but is not limited to the following services: lodging, meals, medication administration, intermittent nursing service, and assistance with personal hygiene, assistance with transfers and ambulation, assistance with dressing, housekeeping and laundry.

Applicant—the person who is developing the proposal for purposes of enrolling the facility, units and/or beds in the Medicaid Program. See the definition of *Person*.

Applicant Representative—the person specified by the applicant on the application form to whom written notifications are sent relative to the status of the application during the review process.

Approval—a determination by the department that an application meets the criteria of the Facility Need Review (FNR) Program for purposes of participating in the Medicaid Program or a determination by the department that an application meets the criteria of the FNR Program for purposes of being licensed by the department.

Approved—beds and/or facilities which are grandfathered in accordance with the grandfather provisions of this program and/or beds approved in accordance with the Facility Need Review Program.

CMS—Centers for Medicare and Medicaid Services.

Community Home—a type of community residential facility which has a capacity of eight or fewer beds.

Department—the Department of Health and Hospitals in the state of Louisiana.

Department of Health and Hospitals (DHH)—the agency responsible for administering the Medicaid Program in Louisiana.

Disapproval—a determination by the department that a proposal does not meet the criteria of the Facility Need Review Program and that the proposed facility, beds or units may not participate in the Medicaid Program.

Emergency Community Home Bed Pool—a pool consisting of approved beds which have been transferred from state developmental centers and which are made available for transfer to non state-operated community homes in order to address emergency situations on a case-by-case basis.

Enrollment in Medicaid—execution of a provider agreement with respect to reimbursement for services provided to Title XIX eligibles.

Facility Need Review (FNR)—a review conducted for nursing facility beds (including skilled beds, IC-I and IC-II beds), intermediate care facility for the developmentally disabled beds, and adult residential care units to determine whether there is a need for additional beds to enroll and participate in the Medicaid Program.

Group Home—a type of community residential facility which has a capacity of nine to 15 beds.

Health Standards Section—the section in the Bureau of Health Services Financing which is responsible for licensing health care facilities and agencies, certifying those facilities and agencies that are applying for participation in the Medicaid (Title XIX) and Medicare (Title XVIII) Programs, and conducting surveys and inspections.

Hospital Service District—a political subdivision of the State of Louisiana created or authorized pursuant to R.S. 46:1051 et seq.

Intermediate Care-Level I (IC-I)—a level of care within a nursing facility which provides basic nursing services under the direction of a physician to persons who require a lesser degree of care than skilled services, but who need care and services beyond the level of room and board. Services are provided under the supervision of a registered nurse seven days a week during the day tour of duty with licensed nurses 24 hours a day.

Intermediate Care-Level II (IC-II)—a level of care within a nursing facility which provides supervised personal care and health related services, under the direction of a physician, to persons who need nursing supervision in addition to help with personal care needs. Services are provided under the supervision of a registered nurse seven days a week during the day tour of duty with licensed nurses 24 hours a day.

Intermediate Care Facility for the Developmentally Disabled (ICF-DD)—a facility which provides developmentally disabled residents with professionally developed individual plans of care, supervision, and therapy in order to attain or maintain optimal functioning.

Legal Device—any legally binding instrument, such as a counter letter, made during the period a Notice of Abeyance is in effect, which would effect the transfer of disenrolled beds.

Notice of Abeyance—a written notice issued by the department to a nursing facility stating that the criteria for placing all of the facility's approved beds in abeyance have been met.

Medicaid Program—the medical assistance program administered in accordance with Title XIX of the Social Security Act.

Notification—is deemed to be given on the date on which a decision is mailed by the Facility Need Review Program or a hearing officer.

Nursing Facility—an institution which is primarily engaged in providing the following services to residents and has in effect a transfer agreement with one or more hospitals:

- a. skilled nursing care and related services for residents who require medical or nursing care;
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
- c. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities; said institutional

facilities are those facilities which are not primarily for the care of mental diseases.

Person—an individual or other legal entity.

Program—the Facility Need Review Program.

Review Period—the period of time in which the review is conducted.

Secretary—the secretary of the Department of Health and Hospitals.

Skilled Nursing Care—a level of care within a nursing facility which provides intensive, frequent, and comprehensive nursing care and/or rehabilitation services ordered by and under the direction of a physician. Services are provided under the supervision of a registered nurse seven days a week during the day tour of duty with licensed nurses 24 hours a day. Skilled beds are located in nursing facilities and in "distinct parts" of acute care hospitals.

a. Facility Need Review policies governing skilled beds in nursing facilities also apply to Title XIX skilled beds in hospitals. In order to be enrolled to participate in Title XIX, skilled beds in hospitals must be approved through facility need review. Skilled care is also referred to as "extended care".

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008).

§12503. General Information

A. The Department of Health and Hospitals will conduct a facility need review (FNR) to determine if there is a need for additional facilities, beds or units to enroll to participate in the Title XIX Program for the following facility types:

1. nursing facilities;
2. skilled nursing facilities;
3. intermediate care facilities for the developmentally disabled; and
4. adult residential care units or facilities.

B. No nursing facility, skilled nursing facility, ICF-DD bed, nor adult residential care provider units/beds shall be enrolled in the Title XIX Program unless the bed has been approved through the FNR Program. No ARCP unit may be licensed by the department unless the unit has been approved through the FNR Program.

C. 42 CFR Part 442.12(d) allows the Medicaid agency to refuse to execute a provider agreement if adequate documentation showing good cause for such refusal has been compiled (i.e., when sufficient beds are available to serve the Title XIX population). The Facility Need Review Program will review applications for additional beds, units and/or facilities to determine whether good cause exists to deny participation in the Title XIX Program to prospective providers of those services subject to the FNR process.

D. The department shall be responsible for reviewing proposals for facilities, beds, and units submitted by health care providers seeking to participate in the Medicaid Program. The secretary or his designee shall issue a decision of approval or disapproval.

1. The duties of the department under this program include, but are not limited to:

a. determining the applicability of these provisions to all requests for approval to enroll facilities, beds, or units in the Medicaid Program;

b. reviewing, determining and issuing approvals or disapprovals for proposals determined to be subject to these provisions;

c. adopting and promulgating such rules and regulations as may be necessary to implement the provisions of this program pursuant to the Administrative Procedure Act; and

d. defining the appropriate methodology for the collection of data necessary for the administration of the program.

E. Grandfather Provision. An approval shall be deemed to have been granted under this program without review for NFs, ICF-DDs and/or beds that meet one of the following descriptions:

1. all valid Section 1122 approved health care facilities/beds;

2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program;

3. all valid approvals for health care facilities issued under the Facility Need Review Program; or

4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

F. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or

2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2612 (December 2008).

§12505. Application and Review Process

A. FNR applications shall be submitted to the Bureau of Health Services Financing, Health Standards Section, Facility Need Review Program. Application shall be submitted on the forms (on 8.5" by 11" paper) provided for that purpose, contain such information as the department may require, and be accompanied by a nonrefundable fee of \$10 per bed or unit. An original and three copies of the application are required for submission.

1. Application forms may be requested in writing or by telephone from the FNR Program. The FNR Program will provide application forms, inventories, utilization data, and other materials relevant to the type of application.

2. The applicant representative specified on the application will be the only person to whom the FNR Program will send written notification in matters relative to the status of the application during the review process. If the applicant representative or his address changes at any time during the review process, the applicant shall notify the FNR Program in writing.

3. A prospective ARCP applicant shall submit the following documents as part of the application:

- a. certification of the number and ratio of Medicaid approved nursing facility beds that will be converted to ARC units;
- b. a letter of intent that includes the location of the proposed ARC site and the proposed date of opening;
- d. certification that the applicant will provide services as defined in the statute; and
- e. certification which includes the following:
 - i. that the applicant has reviewed the licensing regulations and will comply with the licensing regulation; and
 - ii. acknowledgement that failure to meet the time-frames established in paragraph eight above will result in automatic expiration of the FNR approval for the ARCP units.

B. The review period will be no more than 60 days, except as noted in the case of issuance of a request for proposals (RFP). The review period begins on the first day after the date of receipt of the application, or, in the case of issuance of an RFP, on the first day after the period specified in the RFP.

1. A longer review period will be permitted only when initiated by the Facility Need Review Program. A maximum of 30 days will be allowed for an extension, except as otherwise noted for the issuance of a RFP.

2. An applicant may not request an extension of the review period, but may withdraw an application (in writing) at any time prior to the notification of the decision by the FNR Program.

a. The application fee is non-refundable.

3. The FNR Program shall review the application within the specified time limits and provide written notification of the decision to the applicant representative.

a. Notification of disapproval shall be sent by certified mail to the applicant representative, with reasons for disapproval specified.

b. If notification is not sent by the sixtieth day, except as noted in the case of issuance of a RFP, the application is automatically denied.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:812 (August 1995), amended LR 34:2612 (December 2008).

Subchapter B. Determination of Bed or Unit Need
§12507. Intermediate Care Facilities for the Developmentally Disabled

A. The service area for a proposed or existing facility is designated as the department's administrative region in which the facility or proposed facility is or will be located. The administrative regions and the parishes which comprise these regions are as follows:

- 1. Region I: Jefferson, Orleans, Plaquemines, and St. Bernard;
- 2. Region II: Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, West Baton Rouge, and West Feliciana;
- 3. Region III: Assumption, Lafourche, St. Charles, St. James, St. John, St. Mary, and Terrebonne;
- 4. Region IV: Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, and Vermilion;
- 5. Region V: Allen, Beauregard, Calcasieu, Cameron, and Jefferson Davis;

6. Region VI: Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides, Vernon, and Winn;

7. Region VII: Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster;

8. Region VIII: Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, and West Carroll; and

9. Region IX: Livingston, St. Helena, St. Tammany, Tangipahoa, and Washington.

B. The beds and population of the service area where the facility is located, or is proposed to be located, will be considered in determining the need for the facility or additional beds. The beds that are counted in determining the need for community and group homes are approved, licensed beds and approved, unlicensed beds as of the due date for a decision on an application.

C. Data sources utilized include information compiled by the FNR Program and the middle population projections recognized by the State Planning Office as official projections. The population projections utilized are those for the year in which the beds are to be enrolled in the Medicaid Program.

D. In accordance with the department's policy of least restrictive environment, there is currently no identified need for additional facilities with 16 or more beds. Therefore, applications for facilities of 16 or more beds shall not be accepted for review, and applications to increase existing facilities to 16 or more beds shall not be accepted for review.

E. At the present time, the recommended bed-to-population ratio for community and group homes has been achieved. However, special needs and circumstances may arise which the department may consider as indicators of need for additional beds such as occupancy rates, availability and accessibility of clients in need of placements, patient origin studies, and requests for special types of beds or services.

1. For service areas in which average annual occupancy for the four most recent quarters (as reported in the MR-2) is in excess of 93 percent, the department may review the census data, utilization trends, and other factors described in of this section to determine if additional beds are needed.

F. If the department determines that there is a need for beds in a parish with an average annual occupancy in excess of 93 percent, a Request for Proposals (RFP) will be issued. No applications will be accepted under these provisions unless the department declares a need and issues a RFP. Applications will be accepted for expansion of existing facilities and/or for the development of new facilities.

1. The RFP will indicate the region in need of beds, the number of beds needed, the date by which the beds are to be available to the target population (enrolled in Medicaid), and the factors which the department considers relevant in determining the need for the additional beds.

2. The RFP will specify the MR-2 on which the determination of need is based.

3. The RFP will be issued through newspaper publication and will specify the dates during which the department will accept applications.

4. Applications will be accepted for a period to be specified in the RFP. Once submitted, an application cannot be changed and additional information will not be accepted.

G. The department will review the proposals and independently evaluate and assign points to each of the

following 10 items on the application for the quality and adequacy of the response to meet the need of the project:

1. work plan for Medicaid certification;
2. availability of the site for the proposal;
3. relationship or cooperative agreements with other health care providers;
4. accessibility to other health care providers;
5. availability of funds; financial viability;
6. experience and availability of key personnel;
7. range of services, organization of services and program design;
8. methods to achieve community integration;
9. methods to enhance and assure quality of life; and
10. plan to ensure client rights, maximize client choice and family involvement.

H. A score of 0-20 will be given to the applicant's response to each item using the following guideline:

1. 0 = inadequate response;
2. 5 = marginal response;
3. 10 = satisfactory response;
4. 15 = above average response; and
5. 20 = outstanding response.

I. In the case of a tie for the highest score for a specific facility or additional beds, the department will conduct a comparative review of the top scoring proposals which will include prior compliance history. The department will make a decision to approve one of the top scoring applications based on the comparative review of the proposals.

J. If no proposals are received which adequately respond to the need, the department may opt not to approve an application.

K. At the end of the 90-day review period, each applicant will be notified of the department's decision to approve or disapprove the application. However, the evaluation period may be extended for up to 60 days. Applicants will be given 30 days from the date of receipt of the notification by the department in which to file an appeal.

1. The issuance of the approval of the proposal with the highest number of points shall be suspended during the 30-day period for filing appeals and during the pendency of any administrative appeal. All administrative appeals shall be consolidated for purposes of the hearing.

L. Proposals approved under these provisions are bound to the description in the application with regard to type of beds and/or services proposed as well as to the location as defined in the RFP issued by the department.

1. Approval for Medicaid shall be revoked if these aspects of the proposal are altered.

2. Beds to meet a specific disability need approved through this exception must be used to meet the need identified.

M. Prior approval from the Office for Citizens with Developmental Disabilities is required before admission of all Medicaid recipients to facilities in beds approved to meet a specific disability need identified in a RFP issued by the department.

N. Exception for approved beds in downsizing large residential ICF-DD facilities (16 or more beds).

1. A facility with 16 or more beds which voluntarily downsizes its enrolled bed capacity in order to establish a group or community home will be exempt from the bed need criteria.

a. Beds in group and community homes which are approved under this exception are not included in the bed-to-population ratio or occupancy data for group and community homes approved under the FNR Program.

2. Any enrolled beds in the large facility will be disenrolled from the Title XIX Program upon enrollment of the same number of group or community home beds.

3. When the department intends to downsize the enrolled bed capacity of a state-owned facility with 16 or more beds in order to develop one or more group or community home beds that will be owned by the state, a RFP will be issued.

a. The RFP will be issued and beds shall be made available in accordance with the methods described in this Section;

4. For private facility beds downsized to privately owned group or community homes, these facilities should contact the regional Office for Citizens with Developmental Disabilities in the region where the proposed community or group home beds will be located. These proposals do not require facility need review approval.

O. Exception for Additional Beds for Certain ICFs-DD

1. Any ICF-DD which serves children or adults suffering from mental retardation, autism or behavioral problems and which had no less than 150 and no more than 180 approved beds as of August 15, 2003, shall, upon application to the department, be granted approval for up to 50 additional beds without being required to meet the standards set forth in this Section, §12505 or §12527.B.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2613 (December 2008).

§12509. Emergency Community Home Bed Pool

Exception

A. The Emergency Community Home Bed Pool consists of all Medicaid enrolled beds which have been authorized to be transferred from state developmental centers to non state-operated community homes on or before June 30, 2002 in order to address emergency situations on a case-by-case basis.

B. Effective July 1, 2002, the secretary of the department may not authorize the transfer of any beds from the emergency community home bed pool to a non state operated community home unless the bed had been authorized to be transferred to a non state operated community home on or before June 30, 2002 and was subsequently transferred from that facility back to the pool pursuant to the provisions of this Section.

C. Emergency situations which may be addressed through the use of the emergency community home bed pool shall include, but not be limited to situations in which it is difficult or impossible to find a placement for an individual in an ICF-DD because of one of the following:

1. an inadequate number of available ICF-DD beds in the service area to serve the needs of the developmentally disabled population in general;

2. an inadequate number of available ICF-DD beds in the service area to serve the needs of the developmentally

disabled population who also have physical or behavioral disabilities or difficulties; or

3. an inadequate number of available ICF-DD beds in the service area to provide for the transition of individuals from residing in large residential facilities to residing within the community.

D. Any agency or individual who becomes aware of an actual or potential emergency situation should contact the Office for Citizens with Developmental Disabilities (OCDD). OCDD shall submit its recommendations to the Facility Need Review Program for emergency placement. OCDD's recommendations shall include:

1. identification of the individual in need of emergency placement,
2. the individual's needs,
3. the service area in which transfer from the emergency community home bed pool is requested, and
4. the names of one or more existing community homes that would be appropriate for the emergency placement.

E. To be eligible for transfer of one or more beds from the emergency community home bed pool, a community home must meet the following requirements, based on documentation provided by the Health Standards Section.

1. The facility must comply with the physical accessibility requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973; or if it does not comply with those requirements, it must have a written plan to be in compliance within 24 months.

2. The facility cannot have been on a termination track or have had any repeat deficiencies within the last 12 months.

3. The facility must meet all square footage requirements, *Life Safety Code* requirements and general construction requirements of 42 CFR Subpart I, Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, as well as LAC 50:VII.Chapter 301 and LAC 48:I.Chapters 51, 63 and 79.

4. The facility must ensure the provision of sufficient staffing and behavior modification plans to meet the needs of current residents and prevent those residents from being adversely affected by the emergency admission.

F. The secretary shall authorize the transfer of the bed for use at the non state-operated community home. Upon the enrollment of the transferred bed at that community home, the bed shall be permanently transferred to that facility subject to the following conditions.

1. Once the bed is no longer needed to remedy the emergency situation, the facility shall continue to make it available for subsequent emergency placements. However, it may be used temporarily to serve other individuals until it is needed for a new emergency placement.

2. The facility shall make the bed available for a new emergency placement within 72 hours after receiving a request for such placement from the department as set forth herein. If the facility does not comply with such a request, the secretary may, at his discretion, transfer the bed from the facility back to the emergency community home bed pool.

G. Beds which have been placed in the emergency community home bed pool shall be exempt from the bed need criteria and the requirements for requests for proposals which are normally applicable to ICFs-DD.

H. For purposes of the emergency community home bed pool exception, the definition of a service area provided in §12507.A. is applicable.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2614 (December 2008).

§12511. Nursing Facilities

A. The service area for proposed or existing nursing facilities or beds is the parish in which the site is located. Exceptions are the parishes of Ascension, Iberville, Plaquemines and St. John, each of which is composed of two separate service areas as divided by the Mississippi River.

B. Nursing facility beds located in "distinct parts" of acute care general hospitals must be approved through FNR in order to be enrolled to participate in the Medicaid Program.

C. In reviewing the need for beds, all proposed beds shall be considered available as of the projected date of the project. The FNR Program does not recognize the concept of "phasing-in" beds, whereby an applicant provides two or more opening dates.

D. For reviews in which the bed to population ratio is a factor, the bed inventory which will be used is that which is current on the date on which the complete application is received.

1. The bed to population ratio will be recomputed during the review period when the report is incorrect due to an error by the department.

E. For reviews in which utilization is a factor, the occupancy report which will be used is that which is current on the date on which the complete application is received.

1. The occupancy rate will be recomputed during the review period when the report is incorrect due to an error by the department.

F. In determining occupancy rates of nursing facilities or beds:

1. beds for which occupancy shall be based shall include nursing facility beds (skilled, IC-I and IC- II) which are enrolled in Title XIX;

2. each licensed bed shall be considered as available for utilization for purposes of calculating occupancy; and

3. a bed shall be considered in use, regardless of physical occupancy, based on payment for nursing services available or provided to any individual or payer through formal or informal agreement.

G. The beds and population of the service area where the facility is located, or is proposed to be located, will be considered in determining need for the facility or beds.

1. The beds which are counted in determining need for nursing facilities or beds are approved, licensed beds and approved, unlicensed beds as of the due date for decision on an application.

H. Data sources to be used include information compiled by the FNR Program and the middle population projections recognized by the State Planning Office as official projections. Population projections to be used are those for the year in which the beds are to be enrolled in the Medicaid Program.

I. In order for additional beds or facilities to be added in a service area, the bed-to-population ratio for nursing facility beds shall not exceed 65 Medicaid approved beds per 1,000

elderly population in a service area, and the average annual occupancy for the four most recent quarters (as reported in the LTC-2) shall exceed 95 percent in the service area.

J. Exceptions for areas with high occupancy rates may be considered in the following situations.

1. A Medicaid enrolled nursing facility which maintains 98 percent average annual occupancy of its enrolled beds for the four most recent quarters (as reported in the LTC-2) may apply for approval of additional beds to be enrolled in the Medicaid Program.

a. In order for an application to be considered, all approved beds in the facility must be enrolled in Title XIX.

b. In order for a facility to reapply for additional beds, all approved beds must be enrolled in Title XIX for the four most recent quarters, as reported in the LTC-2.

c. The number of beds for which application may be made shall not exceed 10 beds.

d. In determining occupancy rates for purposes of this exception, only an adjustment of one additional day after the date of death, for the removal of personal belongings, shall be allowed if used for that purpose.

i. This adjustment shall not be allowed if nursing services available or provided to another individual are paid for through formal or informal agreement in the same bed for that time period.

e. In determining occupancy rates, more than one nursing facility bed enrolled in Title XIX shall not be considered occupied by the same resident, regardless of payment for nursing services available or provided.

f. For a Medicaid enrolled nursing facility with high occupancy to apply for additional bed approval, documentation of availability of health manpower for the proposed expansion shall be required.

g. For a Medicaid enrolled nursing facility with high occupancy to apply for additional bed approval, for the most recent 36 months preceding the date of application, compliance history and quality of care performance of the applicant facility must be void of any of the following sanctions:

i. appointment of a temporary manager;

ii. termination, non-renewal or cancellation, or initiation of termination or non-renewal of provider agreement; or

iii. license revocation or non-renewal.

2. When average annual occupancy for the four most recent quarters (as reported in the LTC-2) exceeds 95 percent in a parish, the department will determine whether additional beds are needed, and if indicated, may issue a request for proposals (RFP) to develop the needed beds.

a. Upon issuance of the utilization report, the department will identify the parishes with average annual occupancy in excess of 95 percent. The LTC-2 is issued by the department in the fourth month following the end of each calendar quarter.

b. In order to determine if additional beds are needed for each parish in which average annual occupancy is in excess of 95 percent, the department may review the census data, utilization trends, and other factors such as:

i. special needs in an area;

ii. information received from other health care providers and other knowledgeable sources in the area;

iii. waiting lists in existing facilities;

iv. requests from the community;

v. patient origin studies;

vi. appropriateness of placements in an area;

vii. remoteness of an area;

viii. occupancy rates in adjoining and/or adjacent parishes;

ix. availability of alternatives;

x. reasonableness of distance to facilities;

xi. distribution of beds within a service area or geographical area; and

xii. such other factors as the department may deem relevant.

c. The number of beds which can be added shall not exceed 15 percent of the existing approved beds in the parish, or 120 beds, whichever is less. The department will strive to assure that occupancy in existing facilities in the area will not decline below 85 percent as a result of the additional beds;

3. If the department determines that there is, in fact, a need for beds in a parish with average annual occupancy in excess of 95 percent, a RFP will be issued. No applications will be accepted under these provisions unless the department declares a need and issues a RFP. Applications will be accepted for expansions of existing facilities and/or for the development of new facilities.

a. The RFP will be issued through newspaper publication, and will specify the dates during which the department will accept applications. Also, nursing facilities in the service area and adjoining parishes will be notified of the issuance of the RFP.

b. The RFP will indicate the parish and/or area in need of beds, the number of beds needed, the date by which the beds are needed to be available to the target population (enrolled in Medicaid), and the factors which the department considers relevant in determining need for the additional beds. The RFP will specify the LTC-2 on which the determination of need is based.

c. Applications will be accepted for a 30-day period, to be specified in the RFP. Once submitted, an application cannot be changed and additional information will not be accepted.

d. The department will review the proposals and independently evaluate and assign points (out of a possible 120) to the applications as follows:

i. 0-20 points: Availability of beds to the Title XIX population.

NOTE: Work plan for Medicaid certification and availability of site for the proposal.

ii. 0-20 points: Appropriateness of location, or proposed location.

NOTE: Accessibility to target population, relationship or cooperative agreements with other health care providers, and distance to other health care providers.

iii. 0-20 points: Responsiveness to groups with special needs (e.g. AIDS patients, ventilator assisted patients; technology dependent patients);

iv. 0-20 points: Experience and availability of key personnel (e.g., director of nursing, administrator, medical director);

v. 0-20 points: Distribution of beds/facilities within the service area. Geographic distribution of existing beds and population density will be taken into account.

e. A score of 0-20 will be given to the applicant's response to each item using the following guideline:

i. 0 = inadequate response;

- ii. 5 = marginal response;
- iii. 10 = satisfactory response;
- iv. 15 = above average response; and
- v. 20 = outstanding response.

f. If there is a tie for highest score for a specific facility or beds, a comparative review of the top scoring proposals will be conducted. In the case of a tie, the department will make a decision to approve one of the top scoring applications based on comparative review of the proposals.

g. If no proposals are received which adequately respond to the need, the department may opt not to approve an application.

h. At the end of the 60-day review period, each applicant will be notified of the department's decision to approve or disapprove the application. However, the department may extend the evaluation period for up to 30 days. Applicants will be given 30 days from the date of receipt of the department's notification by in which to file an appeal.

i. The issuance of the approval of the application with the highest number of points shall be suspended during the 30-day period for filing appeals and during the pendency of any administrative appeal. All administrative appeals shall be consolidated for purposes of the hearing.

4. Proposals submitted under these provisions are bound to the description in the application with regard to the type of beds and/or services proposed as well as to the site/location as defined in the request issued by the department.

a. Approval for Medicaid certification shall be revoked if these aspects of the proposal are altered.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2615 (December 2008).

§12513. Alternate Use of Licensed Approved Title XIX Beds

A. In a service area in which average annual occupancy is lower than 93 percent, a nursing home may elect to temporarily convert a number of Title XIX beds to an alternate use (e.g., adult day care).

1. The beds may be converted for alternate use until such time as the average annual occupancy in the service area exceeds 93 percent (based on the LTC-2 report) and the facility is notified of the same.

2. The facility shall then either re-enroll the beds as nursing home beds within one year of receipt of notice from the department that the average annual occupancy in the service area exceeds 93 percent.

3. The approval for beds not re-enrolled by that time will be expired.

B. A facility is prohibited from adding beds when alternately using beds.

C. All approved beds must be enrolled as nursing home beds in Title XIX for the four most recent quarters, as reported in the department's occupancy report, in order for additional beds to be approved.

D. A total conversion of all beds is prohibited.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2617 (December 2008).

§12515. Additional Beds for Replacement Facility

A. A nursing facility that has had all approved beds enrolled for the four most recent quarters (as reported in the LTC-2) and is structurally older than 25 years, may apply for approval for additional beds to be enrolled in the Medicaid Program in a replacement facility.

B. The number of beds for which an application may be made shall not exceed 20 beds, with the following exception:

1. a facility may be approved for sufficient beds to bring the total approved beds in the replacement facility to 80.

C. A facility shall not be approved for beds that would exceed 130 total approved beds in the replacement facility.

D. Sufficient documentation must be submitted to demonstrate to the department's satisfaction that the facility is structurally older than 25 years.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2617 (December 2008).

§12517. Adult Residential Care Provider

A. The FNR Program will determine the number of adult residential care provider (ARCP) units to be licensed by the department. No ARCP unit shall be licensed to operate unless the FNR Program has granted an approval for the licensed ARCP unit. Once the FNR Program approval is granted, the unit is then eligible to be licensed by the department, subject to meeting all the requirements for licensure.

1. An existing licensed nursing facility that converts Medicaid approved nursing facility beds to ARCP units shall be automatically granted FNR approval for the converted units. The nursing home must submit an application to the department requesting the approval. The application must detail the Medicaid approved nursing home beds being converted.

B. The service area for proposed or existing adult residential care units is the parish in which the units are to be located. Exceptions are the parishes of Ascension, Iberville, Plaquemines and St. John, each of which is composed of two separate service areas divided by the Mississippi River.

C. Determination of Need Methodology

1. Population Based Methodology. The FNR Program methodology projects the need for ARCP units to be 15 units per 1,000 persons who are 65 years old and older for each service area. The approved unit to population ratio for ARCP shall not exceed 15 units per 1000 persons who are 65 years old and older except as provided for in paragraph three.

2. The need for facilities will be projected five years forward using the most recent census data available from the Louisiana State Division of Administration.

3. Approval for additional units or facilities may be granted by the department if the service area's average annual occupancy for the four most recent quarters exceeds 98 percent. Approval for additional units in new or existing

ARCP facilities shall be granted in increments not to exceed 20 units.

D. ARCP facilities that have approval for licensed units shall submit quarterly reports to the DHH Office of Aging and Adult Services (OAAS). The report shall contain the facility's patient/resident days and such other information as determined by OAAS.

E. Applications for approvals of licensed units submitted under these provisions are bound to the description in the application with regard to the type of units and/or services proposed as well as to the site/location as defined in the application. FNR approval of licensed units shall expire if these aspects of the application are altered.

F. FNR approvals for licensed units are non-transferable. Approvals for licensed units are limited to location and name of original licensee.

1. No portion of the units may be transferred to another party or moved to another location without the submission of a new application to and approval by the department's FNR Program. Approval of licensed units shall automatically expire if moved or transferred without application to and approval by the FNR Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2617 (December 2008).

§12519. Conversion of Medicaid Approved Nursing Facility Beds to Adult Residential Care Provider Units

A. Existing licensed nursing facilities that convert Medicaid approved beds to ARCP units will be automatically granted FNR approval of licensed ARCP units, upon submission of a completed application to the FNR Program.

B. Existing licensed nursing homes shall convert Medicaid approved beds to ARC units on a ratio of four Medicaid approved nursing facility beds for each approved ARCP unit if the existing nursing home facility structure is utilized.

1. Nursing facilities that build new ARC buildings shall surrender two Medicaid approved beds for each approved ARCP unit. The license for any such converted nursing facility bed is surrendered at the date of conversion.

C. Conversion of nursing facility beds to ARCP units is irrevocable and units so converted may not be returned to nursing facility service, except in the case of a gubernatorial or presidential declaration of emergency or natural disaster.

1. In the case of an emergency or natural disaster, the nursing home use shall be temporary, not to exceed six months.

D. Conversion Requirements

1. A nursing facility that utilizes the existing facility structure to convert Medicaid approved beds to ARCP units will have the square footage associated with those converted beds removed from its nursing facility fair rental value calculation.

2. If a nursing facility which constructs a new ARC building certifies that it will utilize the space associated with the converted beds for other nursing facility use, then nursing facility will not have the square footage associated with those converted beds removed from its nursing facility fair rental value calculation.

a. If a nursing home which constructs a new ARC building utilizes the converted space for any purposes other than nursing facility services associated with the remaining licensed beds in the facility, then the nursing facility will have the square footage associated with those converted beds removed from its nursing facility fair rental value calculation.

3. Beds forfeited for purposes of ARC units cannot simultaneously be utilized to convert semi-private rooms to private rooms or be used for any other separate benefits in the rate methodology.

E. The date of conversion shall be the date that plan approval is granted by DHH Engineering and Architectural Services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2618 (December 2008).

§12521. Architectural and Licensing Compliance

A. The following time frames shall apply for complying with the requirements for obtaining approval of architectural plans and licensure.

1. ARCP units which are converted from Medicaid approved beds in existing nursing facilities shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within one year from the date of the FNR approval.

2. ARCP units which are converted from Medicaid approved nursing facility beds in new facilities shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within 24 months from the date of the FNR approval.

3. ARCP units which are to be licensed in existing adult residential facilities shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within one year from the date of the FNR approval.

4. ARCP units which are to be licensed in new adult residential facilities shall have final architectural plans approved no later than six months from the date of the FNR approval. Such units shall be licensed within 24 months from the date of the FNR approval.

B. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant. Inappropriate zoning is not a basis for extension.

C. Failure to meet any of the timeframes in this Section could result in an automatic expiration of the FNR approval of the ARCP units.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2618 (December 2008).

§12523. Reserved.

§12525. Reserved.

Subchapter C. Revocation of Facility Need Review Approvals

§12527. General Provisions

A. Nursing Facilities

1. Beds which are added to an existing, licensed facility must be enrolled in the Title XIX Program within one year of the date of approval by the FNR Program.

2. New nursing facilities which are approved to be constructed must be enrolled in the Title XIX Program within 24 months of the date of the approval.

3. An extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant (e.g., acts of God). Inappropriate zoning is not a basis for extension.

B. Intermediate Care Facilities for the Developmentally Disabled

1. Group and community home beds must be enrolled in the Title XIX Program within nine months of the date of approval by the Facility Need Review Program.

2. A one-time 90-day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant (e.g., acts of God). Inappropriate zoning is not a basis for an extension.

3. If the beds are not enrolled in the Title XIX program within the time limits specified in this Section, the approval will automatically expire.

C. Approval of a group or community home bed shall be revoked when the Office for Citizens with Developmental Disabilities advises that the bed, which was approved for Title XIX reimbursement to meet a specific disability need identified in a RFP issued by the department, is not being used to meet that identified need based on the facility serving a Medicaid recipient in the bed without prior approval from the OCDD.

D. Except as provided in Subchapter E of this Chapter, approval shall be revoked under the following circumstances:

1. a facility's license is revoked, not renewed, or denied, unless the facility obtains a license within 120 days from the date of such revocation, nonrenewal or denial;

2. a facility's provider agreement is terminated unless, within 120 days thereof, the facility enters into a new provider agreement.

E. Except as provided in Subchapter E of this Chapter, beds may not be disenrolled except as provided under the alternate use policy and during the 120-day period to have beds relicensed or recertified. The approval for beds disenrolled will automatically expire except as otherwise indicated.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2619 (December 2008).

Subchapter D. Relocation of Nursing Facility Beds

§12529. General Provisions

A. A nursing facility's approved beds cannot be relocated to a different service area.

B. Approved beds may be relocated only under the following conditions.

1. Subject to the exception provided in Subparagraph 2, all of the approved beds must be relocated to a single new location.

a. The approval of any beds not relocated to that new location shall be revoked.

2. Notwithstanding the requirements of Subparagraph 1, a partial relocation of approved beds may be effected if the following conditions are met:

a. the approved beds are in a nursing facility owned by a hospital service district as of the date of adoption of this rule and at the time of the partial relocation;

b. the partial relocation does not place the approved beds in a different service area;

c. the approved beds are relocated to the site of a currently operational hospital owned by the same or a different hospital service district.

i. If the new location is owned by a different hospital service district, the ownership of the approval of the relocated beds must be transferred to the hospital service district to which the beds are relocated; and

d. no more than 25 percent of the nursing facility's approved beds are relocated.

3. If, within five years after a partial relocation to a hospital site pursuant to Subparagraph 2, the hospital located at that site ceases operations, the relocated beds shall revert to the original facility from which they were relocated. This provision shall not apply to relocations which require a transfer of ownership of the approval of the relocated beds.

4. A hospital service district may relocate or transfer the ownership of the approval of approved beds pursuant to Subparagraph c only once.

5. Subparagraphs B.2., B.3. and B.4. are not intended to prohibit or restrict the relocation of all of the approved beds in a nursing facility by a hospital service district in accordance with Paragraph A. and Subparagraph B.1.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2619 (December 2008).

Subchapter E. Nursing Facility Bed Abeyance

§12531. General Provisions

A. A nursing facility may have all of its approved beds disenrolled from the Medicaid Program and placed in abeyance if the department determines that the average annual occupancy in the service area where the facility is located is less than 85 percent. The department shall base this determination on the occupancy figures contained in the most recent LTC-2 report issued by the department prior to its receipt of a written request that the facility's beds be placed in abeyance in accordance with Paragraph B of this Section.

B. In order to request that a facility's beds be placed in abeyance, all persons or entities who are the holders of the approval, the nursing facility license, and the Medicaid provider agreement must submit to the department a written request signed by each such person or entity. The written request shall:

1. specify the date (which must be no later than 120 days after the receipt of the request by the department) on which the intended closure of the facility will occur; and

2. designate an individual (referred to hereinafter as the "designated contact person") who shall serve as the contact between the party(ies) submitting the request and the department with respect to all matters involving the placing of the facility's beds in abeyance and their removal from abeyance.

a. The written request must include the mailing address and telephone number of that person.

b. If the designated contact person is changed, a written notice thereof, signed by each person or entity who submitted the original request, shall be given to the department.

C. If the department determines that the requirements set forth (Paragraphs A. and B.) have been met, it shall issue a written Notice of Abeyance and forward it to the designated contact person within 30 calendar days after its receipt of the request for abeyance, subject to the provisions of Paragraph L. If the department determines that these requirements have not been met or that the issuance of a Notice of Abeyance would conflict with Paragraph L, it shall issue a written denial and forward it to the designated contact person within 30 calendar days after its receipt of the request.

D. All of a facility's approved beds must be disenrolled from the Medicaid Program within 120 days after the designated contact person's receipt of a Notice of Abeyance. An extension not to exceed 90 days may be granted if extenuating circumstances warrant said extension, such as safe transfer of patients. Otherwise, the notice of abeyance will automatically expire at the end of the 120-day period.

E. All of a facility's approved beds may be disenrolled before the designated contact person's receipt of a notice of abeyance. However if he or she does not receive a notice of abeyance within 120 days after the beds are disenrolled, the provisions of §12527.D and E will be applicable.

F. With respect to the facility's beds which are not designated to be re-enrolled as Medicaid nursing facility beds, the approval shall automatically expire after 120 days from receipt of the notice of abeyance by the designated contact person; unless the beds are re-enrolled by that date, thus rescinding the notice of abeyance.

G. A Notice of Abeyance shall remain in effect until the facility's beds are taken out of abeyance and are re-enrolled in Medicaid.

H. A facility's beds shall remain in abeyance until the average annual occupancy in the facility's service area, as shown in the most recent LTC-2 report, has exceeded 93 percent.

I. If the department determines that the average annual occupancy in the facility's service area, as shown in the most recent LTC-2 report, has exceeded 93 percent, it shall give written notice thereof to the designated contact person.

1. The written notice shall specify the number of the facility's approved beds which must be taken out of abeyance and re-enrolled as Medicaid nursing facility beds.

2. That number shall be determined by the department based upon the following criteria.

a. A nursing facility with 120 or fewer enrolled beds at the time of the request may return all of its enrolled beds from abeyance.

b. A nursing facility with 121 to 160 enrolled beds at the time of the request may return up to 80 percent of its beds from abeyance, but in no case shall it be required to return fewer than 120 beds.

c. A nursing facility with 161 or more enrolled beds at the time of the request may return up to 75 percent of its beds from abeyance, but in no case shall it be required to return fewer than 128 beds, nor shall it be allowed to return more than 175 beds.

d. A nursing facility may choose to return fewer beds from abeyance than are allowed by this Subparagraph and if it does so, the balance of the beds shall be disenrolled.

J. Within one year after the receipt of the written notice described in Paragraph I. (or, in the case of new construction for a replacement facility, within 24 months after the receipt of such notice), the beds specified by the department must be taken out of abeyance and re-enrolled as Medicaid nursing facility beds.

1. An extension of that time may be granted at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant (e.g., acts of God).

2. Inappropriate zoning is not a basis for extension.

3. If the facility's beds which are designated to be re-enrolled as Medicaid nursing facility beds are not re-enrolled within the specified time period, the approval for those beds will automatically expire at the end of that period.

K. If, after issuing the written notice provided in Paragraph I to the designated contact person, the department determines that the requirement set forth in Paragraph H is no longer met, the obligation to place the facility's beds back in service in accordance with Paragraph J shall not be affected or negated.

L. If two or more requests to place beds in abeyance are pending at the same time, and the issuance of Notices of Abeyance for all of the pending requests would conflict with this Paragraph, priority shall be assigned to the requests as follows.

1. If two or more facilities are located in the same service area, a request with respect to a facility having a lower average annual occupancy rate shall have priority over a request with respect to a facility having a higher average annual occupancy rate, based on the most recent LTC-2 report issued by the department.

M. While a facility's beds are in abeyance, the ownership of the approval for those beds may not be transferred and shall not be subject to any legal device.

N. All of a facility's beds which are taken out of abeyance and re-enrolled in the Medicaid Program must remain located together in one facility, which shall be either the original facility in which they were located before being placed in abeyance or another facility located in the same service area as the original facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1023 (May 2004), amended LR 34:2620 (December 2008).

Subchapter F. Administrative Appeals

§12533. Appeal Procedures

A. Upon refusal of the department to grant a FNR approval, only the applicant shall have the right to request an administrative appeal.

1. A written request for such an appeal must be submitted by registered mail to the Secretary of the Department of Health and Hospitals within 30 days after the notification of disapproval is received by the applicant.

2. A fee of \$500 shall accompany a request for an appeal.

B. Hearings shall be conducted by a hearing officer designated by the governor, provided that no person who has

taken part in any prior consideration of, or action upon, the application may conduct such hearings.

1. However, a hearing officer who presided over a hearing and remanded the matter to the department may hear a subsequent appeal of the same application if the department again disapproves the application.

C. The hearing shall be conducted within 30 days after receipt of the written request for the hearing.

1. Requests by the department or the applicant for extensions of time within which to conduct a hearing may be granted at the discretion of the hearing officer, provided that if the hearing is not concluded within 180 days from the date of receipt by the applicant of notification of disapproval, the decision of the department will be considered upheld.

2. The hearing shall be open to the public.

D. The hearing officer shall have the power to:

1. administer oaths and affirmations;
2. regulate the course of the hearings;
3. set the time and place for continued hearings;
4. fix the time for filing briefs and other documents;

and

5. direct the parties to appear and confer to consider the simplification of the issues.

E. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs may be admitted and given probative effect. The rules of privilege recognized by law shall be given effect. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing can be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

F. All evidence, including records and documents in the possession of DHH of which it desires to avail itself, shall be offered and made part of the records. All such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

1. In the case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence. Notice may be taken of judicially cognizable facts.

2. In addition, notice may be taken of generally recognized technical or scientific facts within DHH's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material notices, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

G. The hearing officer shall have the power to sign and issue subpoenas, or to direct the department to do so, in order to require attendance and the testimony by witnesses and to require the productions of books, papers and other documentary evidence.

1. The applicant is required to notify the hearing officer in writing at least 10 days in advance of the hearing of those witnesses whom he wishes to be subpoenaed.

2. No subpoena shall be issued until the party (other than the department) who wishes to subpoena a witness first deposits with the hearing officer a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

3. DHH may request issuance of subpoenas without depositing said sum of money. The witness fee may be waived if the person is an employee of DHH.

4. When any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony as required, DHH may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

a. It shall be the duty of the judge to hear the application and, if satisfactory proof is made, to issue an attachment directed to some proper officer for the arrest of such person.

b. Upon such person being brought before him, the judge shall proceed with the hearing of the case.

c. Upon such hearing, the judge may issue such order as he shall deem proper, not inconsistent with the law for the punishment of contempt, to enforce obedience to the requirements of the summons and to punish such person for this default or disobedience.

H. The department or any party to the proceedings may take the deposition of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in the review proceeding at issue. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the hearing officer in accordance with the rules of evidence provided in this Section.

I. The applicant, the department, any other agency which reviewed the application, and other interested parties (including members of the public and representatives of health services consumers) shall be permitted to give testimony and present arguments at the hearing without formally intervening. Such testimony and arguments shall be presented after the testimony of the applicant and DHH has been presented, or at the discretion of the hearing officer, at any other convenient time. When such testimony is presented, all parties may cross-examine the witness.

J. A record of the hearing proceeding shall be maintained. Copies of such record together with copies of all documents received in evidence shall be available to the parties, provided that any party who requests copies of such material may be required to bear the costs thereof.

K. The hearing officer shall notify all parties, in writing or on the record, of the day on which the hearing will conclude and of any changes thereto; provided that a hearing must be concluded in accordance with the time requirements specified in this Section.

1. As soon as practicable, but not more than 45 days after the conclusion of a hearing, the hearing officer shall send his written decision and the reasons for the decision to the applicant, the department, and any interested parties who participated in the hearing.

2. Such decisions shall be publicized by the department through local newspapers and public information channels.

3. After rendering his decision, the hearing officer shall transmit the record of the hearing to the department.

L. An applicant who fails to have the disapproval reversed shall forfeit his filing fee.

M. Judicial review of the decision of the hearing officer shall be in accordance with the provisions of R.S. 49:964

provided, however, that only an applicant aggrieved by the decision of the hearing officer shall have the right to judicial review.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary,

Bureau of Health Services Financing, LR 21:812 (August 1995), amended LR 34:2621 (December 2008).

Alan Levine
Secretary

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