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Executive Orders

EXECUTIVE ORDER BJ 14-18

Executive Branch—Expenditure Reduction

WHEREAS, pursuant to R.S. 39:75(A)(1), the Division of Administration is directed to submit a monthly budget status report to the Joint Legislative Committee on the Budget (hereafter "the Committee") indicating the balance of the budget for the State General Fund and dedicated funds by comparing the official forecast for these funds to the total authorized appropriations from each fund; once approved by the Committee, the most recent budget status report becomes the official budget status of the State;

WHEREAS, if the most recently approved budget status report indicates that the total appropriation from any fund will exceed the official forecast for that fund, R.S. 39:75(B) requires the Committee to immediately notify the Governor that a projected deficit exists for that fund;

WHEREAS, on November 21, 2014, the Committee notified the Governor that it approved a budget status report at its November 21, 2014, meeting, indicating that a projected deficit of One Hundred Seventy-Nine Million Five Hundred Thirty-Three Thousand Five Hundred Ninety-Two Dollars ($179,533,592) exists in the State General Fund for Fiscal Year 2014-2015, based mainly on the revised official forecast of revenue available for appropriation adopted by the Revenue Estimating Conference on November 14, 2014, compared to total appropriations;

WHEREAS, at its December 18, 2014 meeting, the Committee amended the fiscal status statement and approved a budget status report indicating that an amended projected deficit of One Hundred Seventy Million Four Hundred Ninety-One Thousand Five Hundred Ninety-Two Dollars ($170,491,592) exists in the State General Fund for Fiscal Year 2014-2015;

WHEREAS, once notified that a projected deficit exists, pursuant to Article VII, Section 10, of the Constitution of Louisiana and R.S. 39:75(C)(1)(a), the Governor has interim budget balancing powers to adjust the budget, including the authority to reduce appropriations for the executive branch of government for any program that is appropriated from a fund that is in a deficit posture, not exceeding three percent (3%) in the aggregate of the total appropriations for each budget unit for the fiscal year, and if the Governor does not make necessary adjustments in the appropriations to eliminate the projected deficit within thirty (30) days of the determination of the projected deficit in a fund, R.S. 39:75(D) mandates that the Governor call a special session of the Louisiana Legislature for that purpose;

WHEREAS, as authorized by R.S. 39:75(C)(1)(a), I am exercising my unilateral interim budget balancing powers to reduce the projected deficit by $153,080,648, which reductions exceed in the aggregate seven-tenths of one percent of the total of State General Fund allocations or appropriations of $61,304,260;

WHEREAS, after utilizing that authority, $17,410,944 remains of the projected deficit which must be eliminated, therefore I direct the Commissioner of Administration to present to the Committee for its approval a plan to eliminate the remaining amount of the projected deficit pursuant to R. S. 39:75(C)(2);

WHEREAS, this Executive Order and the plan to be submitted to the Committee may utilize all or a portion of the General Fund dollar savings objective specified in Executive Order BJ 2014-1 and Executive Order BJ 2014-16.

NOW THEREFORE, I, Bobby Jindal, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The following departments, agencies, and/or budget units (hereafter "Unit" and/or "Units") of the executive branch of the State of Louisiana, as described in and/or funded by appropriations through Acts 15, 25, and 45 of the 2014 Regular Session of the Louisiana Legislature (hereafter "the Acts"), shall reduce expenditure of funds appropriated to the Unit from the State General Fund by the Acts, in the amounts shown below:

Act 15-General Operating Appropriations Act:		
Schedule 01-Executive Department State General Fund		
01-107	Division of Administration	$ 3,053,127
01-111	Governor’s Office of Homeland Security	$ 100,000
01-112	Military Affairs	$ 359,000
Schedule 03-Veterans Affairs		
03-130	Veteran's Affairs	$ 240,000
Schedule 04-Elected Officials		
04-160	Agriculture and Forestry	$ 208,316
Schedule 06-Culture, Recreation and Tourism		
06-262	Office of the State Library	$ 26,450
06-264	Office of State Parks	$ 132,569
Schedule 08-Corrections Services		
08A-400	Corrections Administration	$ 142,715
08A-402	Louisiana State Penitentiary	$ 59,692
08A-405	Avoyelles Correctional Center	$ 13,500
08A-406	Louisiana Correctional Institute for Women	$ 7,764
08A-409	Dixon Correctional Institute	$ 30,689
08A-413	Elayn Hunt Correctional Center	$ 22,863
08A-414	David Wade Correctional Center	$ 2,355
08A-416	B.B. Sixty Rayburn Correctional Center	$ 1,577
08A-415	Adult Probation and Parole	$ 55,625
Schedule 08-Youth Services		
08C-403	Office of Juvenile Justice	$ 1,984,208
Schedule 09-Health and Hospitals		
09-305	Medical Vendor Administration	$ 2,635,465
09-306	Medical Vendor Payments	$ 127,441,478
09-307	Office of the Secretary	$ 231,721
09-320	Office of Aging and Adult Services	$ 98,754
09-324	Louisiana Emergency Response Network	$ 10,500
09-326	Office of Public Health	$ 620,289

09-330	Office of Behavioral Health	$ 443,156
09-340	Office of Citizens with Developmental Disabilities	$ 308,213
Schedule 10-Department of Children and Family Services		
10-360	Office of Children and Family Services	$ 964,980
Schedule 11-Natural Resources		
11-432	Office of Conservation	$ 325,046
11-434	Office of Mineral Resources	$ 363,319
Schedule 13-Environmental Quality		
13-850	Office of the Secretary	$ 9,908
Schedule 19-Higher Education		
19A-661	Office of Student Financial Assistance	$ 4,946,681
Schedule 19-Special Schools and Commissions		
19B-662	Louisiana Educational TV Authority	$ 45,000
Schedule 19-Education		
19D-678	State Activities	$ 1,185,733
19D-681	Subgrantee Assistance	$ 4,465,411
19D-695	Minimum Foundation Program	$ 1,123,045
Schedule 20-Other Requirements		
20-931	LED Debt Service/State Commitments	$ 1,421,499

SECTION 2:

A. No later than December 19, 2014, the head of each Unit listed in Section 1 of this Order shall submit to the Commissioner of Administration (hereafter "Commissioner") a mid-year budget reduction plan, on the BA-7 form and questionnaire, which reflects the Unit's proposed allocation of the expenditure reduction ordered in Section 1 of this Order (hereafter "mid-year budget reduction plan"), and a description of the methodology used to formulate the mid-year budget reduction plan.

B. In the event that positions of employment will be affected by the mid-year budget reduction, these positions should be included in your mid-year budget reduction plan.

C. No Unit shall implement the expenditure reduction mandated by Section 1 of this Order without the Commissioner's prior written approval of the Unit's mid-year budget reduction plan.

D. After the Commissioner has given approval of a Unit's mid-year budget reduction plan, any change to the mid-year budget reduction plan requires prior written approval from the commissioner.

SECTION 3: The Commissioner is authorized to develop additional guidelines as necessary to facilitate the administration of this Order.

SECTION 4: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 5: This Order is effective upon signature and shall remain in effect through June 30, 2015, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 18th day of December, 2014.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1412#037

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Beef Industry Council

Beef Promotion and Research Program
(LAC 7:V.Chapter 27)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the enabling authority of R.S. 3:2054(E), notice is hereby given that the Louisiana Beef Industry Council (LBIC) is adopting this renewal of an Emergency Rule in order to establish rules and regulations for its own government and for administration of the affairs of the Council. The declaration of emergency, originally published in the August 20, 2014 State Register, is being renewed to ensure continuous application until the Permanent Rule is in effect.

This declaration of emergency is required because the October, 2013 Louisiana Supreme Court ruling in Krielow v. Louisiana Department of Agriculture and Forestry, which declared R.S. 3:3534 and R.S. 3:3544, statutes that allow a voting majority of rice producers to levy an assessment on all producers, to be unconstitutional, calls into question the constitutionality of sections 3:2055 through 2062 of the Louisiana Revised Statutes. The Revised Statutes established, by referendum vote, the Louisiana Beef Promotion and Research Program (LBPRP) and the LBIC. Among other things, these statutes included procedures for the governance and administration of the LBIC.

Louisiana's cattle industry is essential to the health, safety and welfare of the citizens of this state. In 2004, Louisiana's cattle industry was the second-largest agricultural sector with about $365 million in sales. The LBPRP and the LBIC promote the growth and development of the cattle industry in Louisiana by research, advertisement, promotions, education, and market development, thereby promoting the general welfare of the people of this state.

The LBRPR and the LBIC are the mechanisms through which the state's cattle production and feeding industry develop, maintain, and expand the state, national, and foreign markets for cattle and beef products produced, processed, or manufactured in this state and through which the cattle production and feeding industry of this state contributes otherwise to the development and sustenance of a Louisiana coordinated promotion program and nationally coordinated programs of product improvement through research in consumer marketing via the accepted industry organization of the Cattlemen's Beef Promotion and Research Board and its Beef Industry Council, thus benefiting the entire United States cattle industry and the American public.

This Declaration of Emergency is required in order to provide a means for the LBIC to continue to govern and administer the affairs of the Council, and to allow the Council to continue, to the maximum extent possible within the constraints announced in Krielow, the LBIC's support of the program and protection of the huge investment that has been made, thus insuring the marketability of Louisiana beef, until such time as there is a permanent legislative solution. Failure to promulgate these rules would jeopardize the significant investment to promote the growth and development of Louisiana's cattle industry since the program's inception, and would pose an imminent peril to the health and welfare of the Louisiana's citizens and the state's cattle industry.

This Rule shall have the force and effect of law five days after its promulgation in the official journal of the State of Louisiana and will remain in effect 120 days, unless renewed by the LBIC or until permanent rules are promulgated in accordance with law.

Title 7
AGRICULTURE AND ANIMALS
Part V. Advertising, Marketing and Processing
Chapter 27. Beef Promotion and Research Program

§2701. Purpose

A. The purpose of this Chapter is to provide for the government and for the administration of the affairs of the Louisiana Beef Industry Council.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Louisiana Beef Industry Council, LR 41:

§2703. Powers and Duties of the Council; Quorum

A. The council shall:

1. receive and disburse funds, as prescribed elsewhere in this Chapter, to be used in administering and implementing the provisions and intent of this Chapter;

2. meet regularly, not less often than once in each calendar quarter or at such other times as called by the chairman, or when requested by six or more members of the council;

3. maintain a permanent record of its business proceedings;

4. maintain a permanent and detailed record of its financial accounts;

5. prepare periodic reports and an annual report of its activities for the fiscal year;

6. prepare periodic reports and an annual accounting for the fiscal year of all receipts and expenditures of the council and shall retain a certified public accountant for this purpose;

7. appoint a licensed banking institution as the depository for program funds and disbursements;

8. maintain frequent communications with officers and industry representatives of the Cattlemen's Beef Promotion and Research Board.

B. Six members of the council shall constitute a quorum for the purpose of conducting business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Louisiana Beef Industry Council, LR 41:

§2705. Use of Funds

A. The council may expend the funds available to it to:

1. contract for scientific research with any accredited university, college, or similar institution and enter into other contracts or agreements which will aid in carrying out the purposes of the program, including cattle and beef promotion, consumer market development, research advertising and, including contracts for the purpose of acquisition of facilities or equipment necessary to carry out purposes of the program;

2. disseminate reliable information benefiting the consumer and the cattle and beef industry on such subjects as, but not limited to, purchase, identification, care, storage, handling, cookery, preparation, serving, and the nutritive value of beef and beef products;

3. provide information to such government bodies as requested on subjects of concern to the cattle and beef industry and act jointly or in cooperation with the state or federal government and agencies thereof in the development or administration of programs deemed by the council to be consistent with the objectives of the program;

4. cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program;

5. pay funds to other organizations for work or services performed which are consistent with the objectives of the program.

B. All funds available to the council shall be expended only to effectuate the purposes of this Chapter and shall not be used for political purposes in any manner. A year-end audited report shall be made available annually to the state conventions of the Louisiana Cattlemen's Association and the Louisiana Farm Bureau Federation, and shall be posted on the Division of Administration website in accordance with R.S. 49:1301 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Louisiana Beef Industry Council, LR 41:

§2707. Additional Powers of Council

A. The council may:

1. sue and be sued as a council, without individual liability of the members for acts of the council when acting within the scope of the powers of this Chapter, and in the manner prescribed by the laws of this state;

2. appoint advisory groups composed of representatives from organizations, institutions, governments, or business related to or interested in the welfare of the cattle and beef industry and consumers;

3. employ subordinate officers and employees of the council and prescribe their duties and fix their compensation and terms of employment;

4. accept grants, donations, contributions, or gifts from any source, but only if the use of such resources is not restricted in any manner which is deemed inconsistent with the objectives of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Louisiana Beef Industry Council, LR 41:

§2709. Levies, Assessments, Collection, and Enforcement

A. Pursuant to 7 C.F.R. §1260.172, the council is authorized to collect any assessment in accordance with the Federal Beef Promotion and Research Act of 1985 on all Louisiana cattle purchased or sold within or outside of Louisiana. This assessment shall be known as the "federal assessment" for the purposes of this Chapter. The collecting person shall deduct the amount of the federal assessment subject to any credits due to the producer from the gross receipts of the producer at the time of sale. The purpose of the federal assessment shall be for the producer's participation in the Federal Beef Promotion and Research Program and by virtue of the federally authorized credit for the producer's participation in the Louisiana Beef Promotion and Research Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Louisiana Beef Industry Council, LR 41:

Dale Cambre
Chairman

1412#005

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 135—Health and Safety
(LAC 28:CLVII.309)

The Board of Elementary and Secondary Education (BESE) has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedures Act, and R.S. 17:6, to adopt LAC 28: CLVII, *Bulletin 135—Health and Safety*: §309, Communicable Disease and Control. This Declaration of Emergency, effective October 15, 2014, is being extended beyond the initial 120 day period and will remain in effect until the final Rule becomes effective.

Bulletin 135 addresses health and safety issues in Louisiana public schools, including the prevention and control of communicable diseases.

Proposed revisions to §309, Communicable Disease Control address the dissemination of public health information by LDE to school governing authorities, as well as the local superintendent or charter school leader's exclusion of students or employees having been diagnosed with or exposed to communicable diseases.

A delay in promulgating these rules could result in local school districts and other public schools not having critical policies in place in the event of a public health emergency.

Title 28
EDUCATION
Part CLVII. Bulletin 135—Health and Safety

§309. Communicable Disease Control

A. The LDE will work cooperatively with the Louisiana Department of Health and Hospitals for the prevention, control and containment of communicable diseases in

schools and shall assist in the dissemination of information relative to communicable diseases to all school governing authorities, including but not limited to information relative to imminent threats to public health or safety which may result in loss of life or disease.

B. Students are expected to be in compliance with the required immunization schedule.

1. The principal is required under R.S. 17:170 to exclude children from school attendance who are out of compliance with the immunizations required by this statute.

2. School personnel will cooperate with public health personnel in completing and coordinating all immunization data, waivers and exclusions, including the necessary Vaccine Preventable Disease Section's school ionization report forms (EPI-11, 11/84) to provide for preventable communicable disease control.

C. The local superintendent or chief charter school officer may exclude a student or staff member for not more than five days, or the amount of time required by state or local public health officials, from school or employment when reliable evidence or information from a public health officer or physician confirms him/her of having a communicable disease or infestation that is known to be spread by any form of casual contact and is considered a health threat to the school population. Such a student or staff member may be excluded unless ~~the~~ state or local public health ~~or~~ officers determine~~s~~ the condition is no longer considered contagious.

D. Mandatory screening for communicable diseases that are known not to be spread by casual contact shall not be required as a condition for school entry or for employment or continued employment.

E. Irrespective of the disease presence, routine procedures shall be used and adequate sanitation facilities shall be available for handling blood or bodily fluids within the school setting or on school buses. School personnel shall be trained in the proper procedures for handling blood and bodily fluids and these procedures shall be strictly adhered to by all school personnel

F. Any medical information that pertains to students or staff members, proceedings, discussions and documents shall be confidential information. Before any medical information is shared with anyone in the school setting, a "need-to-know" review shall be made which includes the parent/guardian, student if age 18, employee or his/her representative unless the information is required to meet the mandates of federal or state law or regulation, or BESE policy.

G. Age-appropriate instruction on the principal modes by which communicable diseases are spread and the best methods for the restriction and prevention of these diseases shall be taught to students and inservice education provided to all staff members.

H. A local superintendent may only exclude a student or employee from a school or employment setting when reliable evidence or information from a public health officer or physician confirms that a student/staff member is known to have a communicable disease or infection that is known not to be spread by casual contact if a review panel is held to ensure due process.

I. Due Process Procedures

1. The Review Panel

a. Communicable diseases that are known not to be spread by casual contact (e.g., AIDS, Hepatitis B and other like diseases) will be addressed on a case-by-case basis by a review panel.

b. Panel membership:

i. the physician treating the individual;

ii. a health official from the local parish health department;

iii. a child/employee advocate (e.g., nurse, counselor, child advocate, social worker, employee representative, etc., from in or outside the school setting) approved by the infected person or parent/guardian;

iv. a school representative familiar with the student's behavior in the school setting or the employee's work situation (in most cases the building principal or in the case of a special education student, a representative may be more appropriate);

v. either the parent/guardian of a child, a student if 18, employee, or their representative; and

vi. the school system superintendent.

c. The superintendent will assign a stenographer to record the proceedings.

d. The superintendent will designate the chair of the panel.

e. The chair of the review panel will designate the panel member who will write the proposal for decision.

2. Case Review Process

a. Upon learning of a student/staff member with the LEA who has been identified as having a communicable disease that is known not to be spread by casual contact, the superintendent shall:

i. immediately consult with the physician of the student/staff member or public health officer who has evidence of a present or temporary condition that could be transmitted by casual contact in the school setting:

(a). if the public health officer indicates the student/staff member is well enough to remain in the school setting and poses no immediate health threat through casual contact to the school population because of their illness, the student/staff member shall be allowed to remain in the school setting while the review panel meets;

(b). if the public health officer indicates the student/staff member is currently not well enough to remain in the school setting and/or the affected individual currently has evidence of an illness or infection that poses a potential health threat through casual contact to the school population because of the illness, the student/staff member shall be excluded from the school setting while the review panel meets;

(c). if the public health officer recommends exclusion because a public health threat exists, the review panel will discuss the conditions under which the individual may return to school;

ii. immediately contact the review panel members to convene a meeting to explore aspects of the individual's case;

iii. submit to the parent/guardian or infected person if 18 or older, a copy of the communicable disease control policy;

iv. observe all federal and state statutes, federal and state regulations, and all BESE policies pertaining to provision of special educational services.

3. The Review Panel Process

a. The review panel shall meet within 24-48 hours to review the case. The following aspects should be considered in that review:

i. the circumstances in which the disease is contagious to others;

ii. any infections or illnesses the student/staff member could have as a result of the disease that would be contagious through casual contact in the school situation;

iii. the age, behavior, and neurologic development of the student;

iv. the expected type of interaction with others in the school setting and the implications to the health and safety of others involved;

v. the psychological aspects for both the infected individual remaining in the school setting;

vi. consideration of the existence of contagious disease occurring within the school population while the infected person is in attendance;

vii. consideration of a potential request by the person with the disease to be excused from attendance in school or on the job;

viii. the method of protecting the student/staff member's right to privacy, including maintaining confidential records;

ix. recommendations as to whether the student/staff member should continue in the school setting or if currently not attending school, under what circumstances he/she may return;

x. recommendations as to whether a restrictive setting or alternative delivery of school programs is advisable;

xi. determination of whether an employee would be at risk of infection through casual contact when delivering an alternative educational program;

xii. determination of when the case should be reviewed again by the panel; and

xiii. any other relevant information.

b. Proposal for Decision

i. Within three operational days (i.e., a day when the school board central office is open for business) after the panel convenes, the superintendent shall provide a written decision to the affected party based on the information brought out in the review panel process and will include the rationale for the decision concerning school attendance for the student or continuation of employment for staff member.

ii. If the decision is to exclude the affected person from the school setting because of the existence of a temporary or present condition that is known to be spread by casual contact and is considered a health threat, the written decision shall include the conditions under which the exclusion will be reconsidered.

iii. If the affected person is a special education student, an individualized education program conference must be convened to determine the appropriateness of the program and services for the student.

4. Appeal Process

a. Rehearing Request

i. The parent, guardian or affected person who considers the proposal for decision unjust may request a rehearing, in writing, directed to the superintendent within three days of the date of the decision. Grounds for requesting a rehearing are limited to:

(a). new evidence or information that is important to the decision; or

(b). substantial error of fact.

ii. The superintendent, within 48 hours from the date of receipt of the request for rehearing, shall either grant or deny the request for rehearing. If the request for rehearing is granted, the chair shall reconvene the same panel that originally heard the matter within five business days of the date the hearing is granted.

iii. Within three operational days (a day when the school system's central office is open for business) after the rehearing, the superintendent shall submit the decision to the parent/guardian or affected person.

b. Request for a Local Board Decision

i. The parent/guardian, affected person or their representative, may make a final written appeal to the president of the local board of education within five operational days after the superintendent's decision. The board shall meet within three operational days and hear the student/staff member's appeal along with the proposal for decision and superintendent's decision. Within two business days of the hearing, the board shall render its decision in writing with copies sent to the superintendent, health department official, and parent/guardian or affected person.

ii. Should the superintendent deny the request for rehearing, the appellant may appeal to the local board of education by exercising the process in Subparagraph b.

iii. Review Panel Request for Appeal. If the proposal for decision or the superintendent's decision is contrary to the majority opinion of the review panel, a majority of the panel has the right to appeal either decision in the same manner stated in the appeal process.

5. General

a. If the affected student cannot attend school, the LEA will provide an alternative education setting.

i. If the public health officer determines there is a risk of infection to an employee through casual contact while delivering this program, the employee will not be required to provide educational services.

ii. If the public health officer determines there is no risk of infection to an employee, the employee will be expected to participate in the delivery of educational services.

b. The review panel member who is serving as the advocate for the infected individual (or another person designated by the panel and approved by the parent/guardian, or the infected person) will serve as the liaison between the student/staff member, family and attending physician as it relates to the school setting.

c. These procedures in no way limit or supersede the procedural due process requirements established in 29 USC 706(7), R.S. 17:1941, 7946, and 20 USC 1400-1485 et seq.

6. Confidentiality

a. All persons involved in these procedures shall be required to treat all proceedings, deliberations, and documents as confidential information. Records of the proceedings and the decisions will be kept by the superintendent in a sealed envelope with access limited to only those persons receiving the consent of the parent/guardian or infected person as provided in 20 USC 1232(g).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10)(15); R.S. 17:170; R.S. 17:437; R.S. 17:1941; 20 USCS 1232.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1035 (April 2013), amended LR 41:

Charles E. "Chas" Roemer, IV
President

1501#067

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators
(LAC 28:CXV.339 and 1103)

The Board of Elementary and Secondary Education (BESE) has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedures Act, and R.S. 17:6, to adopt LAC 28:CXV, *Bulletin 741—Louisiana Handbook for School Administrators*: §339, Emergency Planning and Procedures; and §1103, Compulsory Attendance. This Declaration of Emergency, effective October 15, 2014, is being extended beyond the initial 120 day period and will remain in effect until the final Rule becomes effective.

R.S. 17:154.1(B) addresses school closures by local superintendents due to emergency situations as defined in rules promulgated by BESE. Bulletin 741 addresses school emergency planning and response, student absences, and the continued education of students who are ill.

Pursuant to R.S. 17:154.1(B), the proposed revisions to Bulletin 741, §339, Emergency Planning and Procedures, broadly define emergency situations, inclusive of public health emergencies. Proposed revisions to §1103, Compulsory Attendance, address the continued education of students who have been quarantined following prolonged exposure to or direct contact with a person diagnosed with a contagious, deadly disease, as ordered by state or local health officials.

A delay in promulgating these rules could result in local school districts and other public schools not having critical policies in place in the event of a public health emergency.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

§339. Emergency Planning and Procedures

A. Each public school principal or school leader shall have written policies and procedures developed jointly with local law enforcement, fire, public safety, and emergency preparedness officials, that address the immediate response to emergency situations that may develop in the schools and comply with the requirements in R.S. 17:416.16. The principal or school leader shall:

1. submit the crisis management and response plan to the local superintendent for approval;

2. annually review and possibly revise the crisis management and response plan; and

3. within 30 days of each school year, conduct a safety drill to rehearse the plan.

B. The school shall maintain and use contingency plans for immediate responses to emergency situations.

C. The school shall establish and use procedures for reporting accidents to parents and/or the central office.

D. In the absence of a principal or school leader, another individual(s) at the school shall be delegated the necessary authority to use emergency procedures.

E. Procedures for the cancellation of school shall be established, communicated to students, teachers, and parents, and followed when necessary.

F. The school shall establish procedures for special calls to police, fire departments, and hospitals, and practice drills shall be used to ensure the effectiveness of the procedure.

G. The school shall establish procedures for the evacuation of the building in the event of fire, severe weather conditions, or bomb threats. Practice drills shall be used to ensure the effectiveness of the procedure.

H. The local superintendent or chief charter school officer may dismiss any or all schools due to emergency situations, including any actual or imminent threat to public health or safety which may result in loss of life, disease, or injury; an actual or imminent threat of natural disaster, force majeure, or catastrophe which may result in loss of life, injury or damage to property; and, when an emergency situation has been declared by the governor, the state health officer, or the governing authority of the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:416.16 and R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1262 (June 2005), amended LR 39:3258 (December 2013), LR 41:0000 (January 2015).

§1103. Compulsory Attendance

A. Students who have attained the age of seven years shall attend a public or private day school or participate in an approved home study program until they reach the age of 18 years. Any child below the age of seven who legally enrolls in school shall also be subject to compulsory attendance. Refer to Chapter 33 for information on home study programs.

B. A parent, tutor, or legal guardian who has a student who is under the age of 18 and meets one of the requirements below shall be in compliance with the compulsory attendance law.

1. A student, under 18 years of age, who withdraws from school prior to graduating from high school and who has been ruled to be a truant, pursuant to the provisions of Chapter 15 of Title VII of the Louisiana Children's Code, by a court of competent jurisdiction can be ordered by the court to exercise one of the following options within 120 days of leaving school:

a. reenroll in school and make continual progress toward completing the requirements for high school graduation;

b. enroll in a high school equivalency diploma program and make continual progress toward completing the requirements for earning such diploma;

c. enlist in the Louisiana National Guard or a branch of the United States Armed Forces, with a commitment for at least two years of service, and earn a high school equivalency diploma during such service period.

2. If a student is under the age of 18, the parent or guardian may withdraw the student from high school if that student is accepted into a National Guard Youth Challenge Program in this state.

3. For a student who is under the age of 18 and enrolled in school beyond his/her sixteenth birthday, the parent or guardian may request a waiver from the local superintendent for that student to exit school to enroll in an adult education program approved by the Louisiana Community and Technical College System (LCTCS).

a. In the case of a student with no parent or guardian, the local school superintendent may act on behalf of the student in requesting a waiver if appropriate documentation is on file at the local school board office and one or more of the following hardships exist:

i. pregnant or actively parenting;

ii. incarcerated or adjudicated;

iii. institutionalized or living in a residential facility;

iv. chronic physical or mental illness;

v. family and/or economic hardships.

(a). Family and/or economic hardship is defined as a student who acts as a caregiver or must work to support the family due to a parent's death or illness, or needs to be removed from an existing home environment.

b. The local school superintendent or his/her designee may approve the request for exiting public or home school without requesting action from BESE. If the request to exit school to enroll in a LCTCS approved adult education program is denied at the local level, a student may request the waiver from the DOE for approval by BESE with documentation of reason for denial at the local level. Students seeking to exit school to enroll in adult education, who are enrolled in a formal education setting other than a public K-12 institution, may request a waiver from the institutional agency head or his/her designee. Mandatory attendance components shall be met in all of the above circumstances.

4. A student who is at least seventeen years of age may exit high school without violating compulsory attendance statute (R.S. 17:221), if that student has met the following criteria:

a. completed a program established by BESE;

b. achieved a passing score on the GED test; and

c. received a Louisiana High School Equivalency Diploma issued by the Board of Supervisors of Louisiana Community and Technical College System.

C. Students shall be expected to be in attendance every student-activity day scheduled by the LEA.

D. A student is considered to be in attendance when he or she is physically present at a school site or is participating in an authorized school activity and is under the supervision of authorized personnel.

1. This definition for attendance would extend to students who are homebound, assigned to and participating in drug rehabilitation programs that contain a state-approved education component, participating in school-authorized field trips, or taking a state-approved virtual course.

a. Half-Day Attendance. Students are considered to be in attendance for one-half day when they:

i. are physically present at a school site or participating in authorized school activity; and

ii. are under the supervision of authorized personnel for more than 25 percent but not more than half (26-50 percent) of the students' instructional day.

b. Whole-Day Attendance. Students are considered to be in attendance for a whole day when they:

i. are physically present at a school site or are participating in an authorized school activity; and

ii. are under the supervision of authorized personnel for more than 50 percent (51-100 percent) of the students' instructional day.

E. A student who is enrolled in regular or special education and who, as a result of healthcare treatment, physical illness, accident, or the treatment thereof is temporarily unable to attend school, shall be provided instructional services in the home, ~~or~~ hospital environment.

1. Homebound instruction shall be provided by a properly certified teacher on the eleventh school day following an absence of more than 10 consecutive school days for a qualifying illness.

a. After a student has been absent for 10 days for one of the above identified reasons, the student shall be referred for review by the SBLC, to determine need for referral for section 504 services if the student has not previously been identified as a student with a disability.

2. Homebound instruction, at a minimum, shall be provided in the core academic subjects:

a. English;

b. mathematics;

c. science; and

d. social studies.

3. A minimum of four hours of homebound instruction shall be provided per week, unless the student's health as determined by a physician requires less.

a. Consideration shall be given to the individual need for services beyond the core academic subjects for students with disabilities.

4. Homebound services may be provided via a consultative model (properly certified regular or special education teacher when appropriate, consults with the homebound teacher delivering instruction) for students needing such services less than 20 days during a school year.

F. A student who has been quarantined by order of state or local health officers following prolonged exposure to or direct contact with a person diagnosed with a contagious, deadly disease, and is temporarily unable to attend school, shall be provided any missed assignments, homework, or other instructional services in core academic subjects in the home, hospital environment, or temporary shelter to which he has been assigned. The principal, with assistance from the local superintendent or chief charter school officer and the

LDE, shall collaborate with state and local health officers and emergency response personnel to ensure the timely delivery or transmission of such materials to the student.

G. Elementary students shall be in attendance a minimum of 60,120 minutes (equivalent to 167 six-hour days) a school year. In order to be eligible to receive grades, high school students shall be in attendance a minimum of 30,060 minutes (equivalent to 83.5 six-hour school days), per semester or 60,120 minutes (equivalent to 167 six-hour school days) a school year for schools not operating on a semester basis.

1. Students in danger of failing due to excessive absences may be allowed to make up missed time in class sessions held outside the regular class time. The make-up sessions must be completed before the end of the current semester and all other policies must be met.

H. Each LEA shall develop and implement a system whereby the principal of a school, or his designee, shall notify the parent or legal guardian in writing upon on or before a student's third unexcused absence or unexcused occurrence of being tardy, and shall hold a conference with such student's parent or legal guardian. This notification shall include information relative to the parent or legal guardian's legal responsibility to enforce the student's attendance at school and the civil penalties that may be incurred if the student is determined to be habitually absent or habitually tardy. The student's parent or legal guardian shall sign a receipt for such notification.

I. Tardy shall include but not be limited to leaving or checking out of school unexcused prior to the regularly scheduled dismissal time at the end of the school day but shall not include reporting late to class when transferring from one class to another during the school day.

J. Exceptions to the attendance regulation shall be the enumerated extenuating circumstances below that are verified by the Supervisor of Child Welfare and Attendance or the school principal/designee where indicated. These exempted absences do not apply in determining whether a student meets the minimum minutes of instruction required to receive credit:

1. extended personal physical or emotional illness as verified by a physician or nurse practitioner licensed in the state;

2. extended hospital stay in which a student is absent as verified by a physician or dentist;

3. extended recuperation from an accident in which a student is absent as verified by a physician, dentist, or nurse practitioner licensed in the state;

4. extended contagious disease within a family in which a student is absent as verified by a physician or dentist licensed in the state; or

5. quarantine due to prolonged exposure to or direct contact with a person diagnosed with a contagious, deadly disease, as ordered by state or local health officials; or

6. observance of special and recognized holidays of the student's own faith;

7. visitation with a parent who is a member of the United States Armed Forces or the National Guard of a state and such parent has been called to duty for or is on leave from overseas deployment to a combat zone or combat support posting. Excused absences in this situation shall not exceed five school days per school year;

8. absences verified and approved by the school principal or designee as stated below:

a. prior school system-approved travel for education;

b. death in the immediate family (not to exceed one week); or

c. natural catastrophe and/or disaster.

K. For any other extenuating circumstances, the student's parents or legal guardian must make a formal appeal in accordance with the due process procedures established by the LEA.

L. Students who are verified as meeting extenuating circumstances, and therefore eligible to receive grades, shall not receive those grades if they are unable to complete makeup work or pass the course.

M. Students participating in school-approved field trips or other instructional activities that necessitate their being away from school shall be considered to be present and shall be given the opportunity to make up work.

N. If a student is absent from school for 2 or more days within a 30-day period under a contract or employment arrangement to render artistic or creative services for compensation as set forth in the Child Performer Trust Act (R.S. 51:2131 et seq.) the employer shall employ a certified teacher, beginning on the second day of employment, to provide a minimum of three education instruction hours per day to the student pursuant to the lesson plans for the particular student as provided by the principal and teachers at the student's school. There must be a teacher to student ratio of one teacher for every 10 students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112, R.S. 17:221.3-4, R.S. 17:226.1, and R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:641 (April 2009), LR 35:1097 (June 2009), LR 35:1475 (August 2009), LR 36:482 (March 2010), LR 36:1224 (June 2010), LR 37:1126 (April 2011), LR 37:2132 (July 2011), LR 38:1000 (April 2012), LR 38:1225 (May 2012), LR 38:1399 (June, 2012), LR 39:2205 (August 2013), LR 41:0000 (January 2015).

Charles E. "Chas" Roemer, IV
President

1501#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Applied Behavior Analysis-Based Therapy Services
(LAC 50:XV.Chapters 1-7)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapters 1-7 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver in order to provide for the allocation of waiver opportunities to Medicaid-eligible children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation (hereafter referred to as *Chisholm* class members) who have a diagnosis of pervasive developmental disorder or autism spectrum disorder, and are in need of applied behavior analysis-based (ABA) therapy services (*Louisiana Register*, Volume 39, Number 10). This action was taken as a temporary measure to ensure *Chisholm* class members would have access to ABA therapy services as soon as possible.

To ensure continued, long-lasting access to ABA-based therapy services for *Chisholm* class members and other children under the age of 21, the department promulgated an Emergency Rule which adopted provisions to establish coverage and reimbursement for ABA-based therapy services under the Medicaid State Plan (*Louisiana Register*, Volume 40, Number 2). The department subsequently promulgated an Emergency Rule which amended the provisions of the February 1, 2014 Emergency Rule to ensure compliance with all of the provisions required by the court order issued in *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation (*Louisiana Register, Volume 40, Number 10).* This Emergency Rule is being promulgated to continue the provisions of the October 20, 2014 Emergency Rule.

This action is being taken to avoid imminent peril to the public health and welfare of children who are in immediate need of ABA-based therapy services, and to comply with the judge's order that these services be provided to *Chisholm* class members.

Effective February 18, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing applied behavior analysis services to clarify these provisions.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Applied Behavior Analysis-Based Therapy Services

Chapter 1. General Provisions

§101. Program Description and Purpose

A. Applied behavior analysis-based (ABA) therapy is the design, implementation, and evaluation of environmental modification using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including the direct observation, measurement, and functional analysis of the relations between environment and behavior. ABA-based therapies teach skills through the use of behavioral observation and reinforcement or prompting to teach each step of targeted behavior. ABA-based therapies are based on reliable evidence and are not experimental.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§103. Recipient Criteria

A. In order to qualify for ABA-based therapy services, a Medicaid recipient must meet the following criteria. The recipient must:

1. be from birth up to 21 years of age;

2. exhibit the presence of excesses and/or deficits of behaviors that significantly interfere with home or community activities (examples include, but are not limited to aggression, self-injury, elopement, impaired development in the areas of communication and/or social interaction, etc.);

3. be diagnosed by a qualified health care professional with a condition for which ABA-based therapy services are recognized as therapeutically appropriate, including autism spectrum disorder; and

4. have a comprehensive diagnostic evaluation that prescribes and/or recommends ABA services that is conducted by a qualified health care professional.

5. - 6. Repealed.

B. All of the criteria in §103.A must be met to receive services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 3. Services

§301. Covered Services and Limitations

A. Medicaid covered ABA-based therapy services must be:

1. medically necessary;

2. prior authorized by the Medicaid Program or its designee; and

3. delivered in accordance with the recipient's treatment plan.

B. Services must be provided directly or billed by behavior analysts licensed by the Louisiana Behavior Analyst Board.

C. Medical necessity for ABA-based therapy services shall be determined according to the provisions of the *Louisiana Administrative Code* (LAC), Title 50, Part I, Chapter 11 (*Louisiana Register*, Volume 37, Number 1).

D. ABA-based therapy services may be prior authorized for a time period not to exceed 180 days. Services provided without prior authorization shall not be considered for reimbursement, except in the case of retroactive Medicaid eligibility.

E. Service Limitations

1. Services shall be based upon the individual needs of the child, and must give consideration to the child's age, school attendance requirements, and other daily activities as documented in the treatment plan.

2. Services must be delivered in a natural setting (e.g., home and community-based settings, including schools and clinics).

a. Services delivered in a school setting must not duplicate services rendered under an individualized family service plan (IFSP) or an individualized educational program (IEP) as required under the federal Individuals with Disabilities Education Act (IDEA).

3. Any services delivered by direct line staff must be under the supervision of a lead behavior therapist who is a Louisiana licensed behavior analyst.

F. Not Medically Necessary/Non-Covered Services. The following services do not meet medical necessity criteria, nor qualify as Medicaid covered ABA-based therapy services:

1. therapy services rendered when measureable functional improvement or continued clinical benefit is not expected, and therapy is not necessary for maintenance of function or to prevent deterioration;

2. services that are primarily educational in nature;

3. services delivered outside of the school setting that are duplicative services under an individualized family service plan (IFSP) or an individualized educational program (IEP), as required under the federal Individuals with Disabilities Education Act (IDEA);

4. treatment whose purpose is vocationally- or recreationally-based;

5. custodial care;

a. for purposes of these provisions, custodial care:

i. shall be defined as care that is provided primarily to assist in the activities of daily living (ADLs), such as bathing, dressing, eating, and maintaining personal hygiene and safety;

ii. is provided primarily for maintaining the recipient's or anyone else's safety; and

iii. could be provided by persons without professional skills or training; and

6. services, supplies, or procedures performed in a non-conventional setting including, but not limited:

a. resorts;

b. spas;

c. therapeutic programs; and

d. camps.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§303. Treatment Plan

A. ABA-based therapy services shall be rendered in accordance with the individual's treatment plan. The treatment plan shall:

1. be person-centered and based upon individualized goals;

2. be developed by a licensed behavior analyst;

3. delineate both the frequency of baseline behaviors and the treatment development plan to address the behaviors;

4. identify long, intermediate, and short-term goals and objectives that are behaviorally defined;

5. identify the criteria that will be used to measure achievement of behavior objectives;

6. clearly identify the schedule of services planned and the individual providers responsible for delivering the services;

7. include care coordination involving the parents or caregiver(s), school, state disability programs, and others as applicable;

8. include parent/caregiver training, support, and participation;

9. have objectives that are specific, measureable, based upon clinical observations, include outcome measurement assessment, and tailored to the individual; and

10. ensure that interventions are consistent with ABA techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 5. Provider Participation

§501. General Provisions

A. ABA-based therapy services must be provided by or under the supervision of a behavior analyst who is currently licensed by the Louisiana Behavior Analyst Board, or a licensed psychologist, or a licensed medical psychologist.

B. Licensed behavior analysts that render ABA-based therapy services shall meet the following provider qualifications:

1. be licensed by the Louisiana Behavior Analyst Board;

2. be covered by professional liability insurance to limits of $1,000,000 per occurrence, $1,000,000 aggregate;

3. have no sanctions or disciplinary actions on their Board Certified Behavior Analyst (BCBA®) or Board Certified Behavior Analyst-Doctoral (BCBA-D) certification and/or state licensure;

4. not have Medicare/Medicaid sanctions, or be excluded from participation in federally funded programs (i.e., Office of Inspector General's list of excluded individuals/entities (OIG-LEIE), system for award management (SAM) listing and state Medicaid sanctions listings); and

5. have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the behavior analyst is currently working and residing.

a. Criminal background checks must be performed at the time of hire and at least five years thereafter.

b. Background checks must be current, within a year prior to the initial Medicaid enrollment application. Background checks must be performed at least every five years thereafter.

C. Certified assistant behavior analyst that render ABA-based therapy services shall meet the following provider qualifications:

1. must be certified by the Louisiana Behavior Analyst Board;

2. must work under the supervision of a licensed behavior analyst;

a. the supervisory relationship must be documented in writing;

3. must have no sanctions or disciplinary actions, if state-certified or board-certified by the BACB®;

4. may not have Medicare or Medicaid sanctions, or be excluded from participation in federally funded programs (i.e., Office of Inspector General's list of excluded individuals/entities (OIG-LEIE), system for award management (SAM) listing and state Medicaid sanctions listings); and

5. have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the certified assistant behavior analyst is currently working and residing.

a. Evidence of this background check must be provided by the employer.

b. Criminal background checks must be performed at the time of hire and an update performed at least every five years thereafter.

D. Registered line technicians that render ABA-based therapy services shall meet the following provider qualifications:

1. must be registered by the Louisiana Behavior Analyst Board;

2. must work under the supervision of a licensed behavior analyst;

a. the supervisory relationship must be documented in writing;

3. may not have Medicaid or Medicare sanctions or be excluded from participation in federally funded programs (OIG-LEIE listing, SAM listing and state Medicaid sanctions listings); and

4. have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the certified assistant behavior analyst is currently working and residing.

a. Evidence of this background check must be provided by the employer.

b. Criminal background checks must be performed at the time of hire and an update performed at least every five years thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 7. Reimbursements

§701. General Provisions

A. The Medicaid Program shall provide reimbursement for ABA-based therapy services to enrolled behavior analysts who are currently licensed and in good standing with the Louisiana Behavior Analyst Board. Reimbursement shall only be made for services billed by a licensed behavior analyst, licensed psychologist, or licensed medical psychologist.

B. Reimbursement for ABA services shall not be made to, or on behalf of services rendered by, a parent, a legal guardian or legally responsible person.

C. Reimbursement shall only be made for services authorized by the Medicaid Program or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§703. Reimbursement Methodology

A. Reimbursement for ABA-based therapy services shall be based upon a percentage of the commercial rates for ABA-based therapy services in the state of Louisiana. The rates are based upon 15 minute units of service, with the exception of mental health services plan which shall be reimbursed at an hourly fee rate.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#043

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Home Health Program
Rehabilitation Services
Reimbursement Rate Increase
(LAC 50:XIII.Chapter 9)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the June 20, 1997, May 20, 2001, and the May 20, 2004 Rules governing rehabilitation services and adopts LAC 50:XIII.Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement for rehabilitation services covered in the Home Health Program. In compliance with a court order from the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing rehabilitation services covered under the Home Health Program in order to increase the reimbursement rates for physical and occupational therapy services for recipients under the age of 21, and to discontinue the automatic enhanced rate adjustment for these services (*Louisiana Register*, Volume 40, Number 2). This Emergency Rule also repealed the June 20, 1997, May 20, 2001, and the May 20, 2004 Rules governing rehabilitation services covered in the Home Health Program, and revised and repromulgated the provisions in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule is being promulgated to continue the provisions of the February 13, 2014 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to therapy services in the Home Health Program.

Effective February 11, 2015, the department amends the provisions governing the Home Health Program in order to increase the reimbursement rates for physical and occupational therapy services provided to recipients under the age of 21, and to discontinue the automatic enhanced rate adjustment for these services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health
Subpart 1. Home Health Services
Chapter 9. Rehabilitation Services
§901. General Provisions

A. The Medicaid Program provides coverage for rehabilitation services rendered in the Home Health Program. Home Health rehabilitation services include:

1. physical therapy;
2. occupational therapy; and
3. speech/language therapy.

B. All home health rehabilitation services must be medically necessary and prior authorized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§903. Reserved.

§905. Reimbursement Methodology

A. The Medicaid Program provides reimbursement for physical therapy, occupational therapy and speech/language therapy covered under the Home Health Program.

B. Effective for dates of service on or after February 13, 2014, reimbursement for physical and occupational therapy services shall be 85 percent of the 2013 Medicare published rate. There shall be no automatic enhanced rate adjustment for physical and occupational therapy services.

C. Speech/language therapy services shall continue to be reimbursed at the flat fee in place as of February 13, 2014 and in accordance with the Medicaid published fee schedule for speech/language therapy services provided in the Home Health Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#044

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Children's Specialty Hospitals Reimbursements
(LAC 50:V.967)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Due to a budgetary shortfall in SFY 2013, the Department of Health and Hospitals, Bureau of Health Services Financing, amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals, including children's specialty hospitals (*Louisiana Register*, Volume 40, Number 2).

The department subsequently promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals to revise the reimbursement methodology and establish outlier payment provisions (*Louisiana Register*, Volume 40, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 4, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining access to neonatal and pediatric intensive care unit services and encouraging the continued participation of hospitals in the Medicaid Program.

Effective February 2, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§967. Children's Specialty Hospitals

A. Routine Pediatric Inpatient Services. For dates of service on or after October 4, 2014, payment shall be made per a prospective per diem rate that is 81.1 percent of the routine pediatric inpatient cost per day as calculated per the "as filed" fiscal year end cost report ending during SFY 2014. The "as filed" cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

1. Repealed.

B. Inpatient Psychiatric Services. For dates of service on or after October 4, 2014, payment shall be a prospective per diem rate that is 100 percent of the distinct part psychiatric cost per day as calculated per the as filed fiscal year end cost report ending during SFY 2014. The as filed cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

1. Repealed.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants.

1. Transplants. Payment shall be the lesser of costs or the per diem limitation for each type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each type of transplant per the cost reporting period which ended in SFY 2009. The target rate shall be inflated using the update

factors published by the Centers for Medicare and Medicaid (CMS) beginning with the cost reporting periods starting on or after January 1, 2010.

a. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each type of transplant multiplied times the per diem limitation for the period.

2. Neonatal Intensive Care Units, Pediatric Intensive Care Units, and Burn Units. For dates of service on or after October 4, 2014, payment for neonatal intensive care units, pediatric intensive care units, and burn units shall be made per prospective per diem rates that are 84.5 percent of the cost per day for each service as calculated per the "as filed" fiscal year end cost report ending during SFY 2014. The "as filed" cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

D. Children's specialty hospitals shall be eligible for outlier payments for dates of service on or after October 4, 2014.

1. Repealed.

E. …

1. Repealed.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.C.1 above shall be reduced by 5 percent. Effective for dates of service on or after January 1, 2011, final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 95 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

G. Effective for dates of service on or after August 1, 2010, the per diem rates as calculated per §967.C.1 above shall be reduced by 4.6 percent. Effective for dates of service on or after January 1, 2011, final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 90.63 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

H. Effective for dates of service on or after January 1, 2011, the per diem rates as calculated per §967.C.1 above shall be reduced by 2 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 88.82 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

I. …

J. Effective for dates of service on or after August 1, 2012, the per diem rates as calculated per §967.C.1 above shall be reduced by 3.7 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 85.53 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

K. Effective for dates of service on or after February 1, 2013, the per diem rates as calculated per §967.C.1 above shall be reduced by 1 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.-C.1 for the period, multiplied by 84.67 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November 2010), amended LR 37:2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended LR 40:1941 (October 2014), LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#045

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Public-Private Partnerships
South Louisiana Area
(LAC 50:V.1703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services. Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative (*Louisiana Register*, Volume 38, Number 11). The department promulgated an Emergency Rule which amended the provisions governing reimbursement for Medicaid payments for inpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility (*Louisiana Register*,

Volume 39, Number 4). The department subsequently promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient services provided by non-state owned hospitals participating in public-private partnerships to establish payments for hospitals located in the Lafayette and New Orleans areas (*Louisiana Register*, Volume 39, Number 7).

The department promulgated an Emergency Rule which amended the provisions of the June 24, 2013 Emergency Rule governing inpatient hospital services to remove the provisions governing the cooperative endeavor agreements for Lafayette and New Orleans area hospitals as a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the corresponding State Plan Amendments (*Louisiana Register*, Volume 40, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective February 17, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 17. Public-Private Partnerships

§1703. Reimbursement Methodology

A. Reserved.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows:

1. The inpatient reimbursement shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

C. Baton Rouge Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals (DHH) shall enter into a cooperative endeavor agreement (CEA) with a non-state owned and operated hospital to increase its provision of inpatient Medicaid hospital services by providing services that were previously delivered and terminated by the state-owned and operated facility in Baton Rouge.

2. A quarterly supplemental payment shall be made to this qualifying hospital for inpatient services based on dates of service on or after April 15, 2013. Payments shall be made quarterly based on the annual upper payment limit calculation per state fiscal year. Payments shall not exceed the allowable Medicaid charge differential. The Medicaid inpatient charge differential is the Medicaid inpatient charges less the Medicaid inpatient payments (which includes both the base payments and supplemental payments).

3. The qualifying hospital shall provide quarterly reports to DHH that will demonstrate that, upon implementation, the annual Medicaid inpatient quarterly payments do not exceed the annual Medicaid inpatient charges per 42 CFR 447.271. Before the final quarterly payment for each state fiscal year the quarterly reports will be reviewed and verified with Medicaid claims data. The final quarterly payment for each state fiscal year will be reconciled and will be adjusted to assure that the annual payment does not exceed the allowable Medicaid inpatient charge differential.

4. Inpatient services shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

D. - K. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#046

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Intermediate Care Facilities for Persons
with Intellectual Disabilities
Complex Care Reimbursements
(LAC 50:VII.32915)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides Medicaid reimbursement to non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for services provided to Medicaid recipients.

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID to establish reimbursement for complex care services provided to Medicaid recipients residing in non-state ICFs/ID (*Louisiana Register*, Volume 40, Number 10). This Emergency Rule is being promulgated

to continue the provisions of the October 1, 2014 Emergency Rule. This action is being taken to protect the public health and welfare of Medicaid recipients with complex care needs who reside in ICFs/ID.

Effective January 30, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing non-state ICFs/ID to establish reimbursement for complex care services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32915. Complex Care Reimbursements

A. Effective for dates of service on or after October 1, 2014, non-state intermediate care facilities for persons with intellectual disabilities may receive an add-on payment to the per diem rate for providing complex care to Medicaid recipients who require such services. The add-on rate adjustment shall be a flat fee amount and may consist of payment for any one of the following components:

1. equipment only;
2. direct service worker(DSW);
3. nursing only;
4. equipment and DSW;
5. DSW and nursing;
6. nursing and equipment; or
7. DSW, nursing, and equipment.

B. Non-state owned ICFs/ID may qualify for an add-on rate for recipients meeting documented major medical or behavioral complex care criteria. This must be documented on the complex support need screening tool provided by the department. All medical documentation indicated by the screening tool form and any additional documentation requested by the department must be provided to qualify for the add-on payment.

C. In order to meet the complex care criteria, the presence of a significant medical or behavioral health need must exist and be documented. This must include:

1. endorsement of at least one qualifying condition with supporting documentation; and

2. endorsement of symptom severity in the appropriate category based on qualifying condition(s) with supporting documentation.

a. Qualifying conditions for complex care must include at least one of the following as documented on the complex support need screening tool:

i. significant physical and nutritional needs requiring full assistance with nutrition, mobility, and activities of daily living;

ii. complex medical needs/medically fragile; or

iii. complex behavioral/mental health needs.

D. Enhanced Supports. Enhanced supports must be provided and verified with supporting documentation to qualify for the add-on payment. This includes:

1. endorsement and supporting documentation indicating the need for additional direct service worker resources;

2. endorsement and supporting documentation indicating the need for additional nursing resources; or

3. endorsement and supporting documentation indicating the need for enhanced equipment resources (beyond basic equipment such as wheelchairs and grab bars).

E. One of the following admission requirements must be met in order to qualify for the add-on payment:

1. the recipient has been admitted to the facility for more than 30 days with supporting documentation of necessity and provision of enhanced supports; or

2. the recipient is transitioning from another similar agency with supporting documentation of necessity and provision of enhanced supports.

F. All of the following criteria will apply for continued evaluation and payment for complex care.

1. Recipients receiving enhanced rates will be included in annual surveys to ensure continuation of supports and review of individual outcomes.

2. Fiscal analysis and reporting will be required annually.

3. The provider will be required to report on the following outcomes:

a. hospital admissions and diagnosis/reasons for admission;

b. emergency room visits and diagnosis/reasons for admission;

c. major injuries;

d. falls; and

e. behavioral incidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#047

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Intellectual Disabilities—Public Facilities Reimbursement Rate Increase
(LAC 50:VII.32969)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the

provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD), hereafter referred to as intermediate care facilities for persons with intellectual disabilities (ICFs/ID), to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 39, Number 2). This Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*.

The department promulgated an Emergency Rule which amended the provisions governing the transitional rates for public facilities in order to redefine the period of transition (*Louisiana Register*, Volume 39, Number 10). The department subsequently promulgated an Emergency Rule to assure compliance with the technical requirements of R.S. 49:953, and to continue the provisions of the October 1, 2013 Emergency Rule governing transitional rates for public facilities (*Louisiana Register*, Volume 40, Number 3). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID to increase the add-on amount to the per diem rate for the provider fee (*Louisiana Register*, Volume 40, Number 3).

Due to an increase in the add-on amount to the per diem rate for the provider fee, the department promulgated an Emergency Rule which amended the provisions governing the transitional rates for public facilities in order to increase the Medicaid reimbursement rate (*Louisiana Register*, Volume 40, Number 9). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2014 Emergency Rule. This action is being taken to protect the public health and welfare of Medicaid recipients transitioning from public ICFs/ID by ensuring continued provider participation in the Medicaid Program.

Effective January 30, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with intellectual disabilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities
Chapter 329. Reimbursement Methodology
Subchapter C. Public Facilities
§32969. Transitional Rates for Public Facilities

A. - F.4. …

G. Effective for dates of service on or after October 1, 2014, the transitional Medicaid reimbursement rate shall be increased by $1.85 of the rate in effect on September 30, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:326 (February 2013), LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#048

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medicaid Eligibility
Provisional Medicaid Program
(LAC 50:III.2305)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:III.2305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1902(a)(10) of Title XIX of the Social Security Act and Section 435.210 of Title 42 of the *Code of Federal Regulations* (CFR) provides states with the option to cover individuals under their Medicaid State Plan who are aged or have a disability, and who meet the income and resource requirements for supplemental security income (SSI) cash assistance. These individuals must be referred to the Social Security Administration (SSA) for assistance as there currently is no eligibility category under the Medicaid Program to provide them with Medicaid benefits. Their Medicaid eligibility is contingent upon a favorable decision for SSI cash assistance.

Pursuant to Section 1902(a)(10)of Title XIX of the Social Security Act and 42 CFR 435.210, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions to include this optional coverage group under the Medicaid State Plan by implementing the Provisional Medicaid Program (*Louisiana Register*, Volume 40, Number 2). This Medicaid program provides interim Medicaid-only benefits to eligible individuals until such time that a decision has been rendered on their SSI cash assistance application pending with the Social Security Administration. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2014 Emergency Rule.

This action is being taken to avoid imminent peril to the health and safety of certain individuals who would have to wait for a Social Security Administration decision to receive Medicaid benefits in order to obtain necessary medical care.

Effective February 7, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing hereby adopts provisions to implement the Provisional Medicaid Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 3. Eligibility Groups and Factors
Chapter 23. Eligibility Groups and Medicaid Programs
§2305. Provisional Medicaid Program

A. The Provisional Medicaid Program provides interim Medicaid-only coverage to individuals who:

1. are aged or have a disability;

2. meet income and resource requirements for supplemental security income (SSI) cash assistance; and

3. have applied for benefits through the Social Security Administration (SSA) and are awaiting a decision on the pending application.

a. Applicants shall have 90 days from the date of Medicaid application to provide proof to the department of a pending application with SSA. If proof of a pending application with SSA is not received timely, after notification by the department has been issued, interim Medicaid benefits shall be terminated.

b. Individuals who would be ineligible for SSI cash assistance due to factors other than excess income and resources or meeting the disability criteria of the program are exempt from the requirement to have a pending application for benefits with the Social Security Administration (SSA).

B. The Provisional Medicaid Program provides coverage to individuals with income equal to or less than the federal benefit rate (FBR), and resources that are equal to or less than the resource limits of the SSI cash assistance program.

C. A certification period for the Provisional Medicaid Program shall not exceed six months, and shall end upon the final decision being rendered on the recipient's pending application for benefits through the SSA, whether the outcome is receipt of benefits or denial of benefits due to excess income and resources or not meeting SSA's disability or age criteria.

D. Retroactive coverage up to three months prior to the receipt of the Medicaid application shall be available to recipients in the Provisional Medicaid Program.

1. Any retroactive coverage period shall not be prior to the implementation date of the Provisional Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#049

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
(LAC 50:XXVII.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals and replaces the provisions of the October 20, 1994 Rule governing non-emergency medical transportation, and amends LAC 50:XXVII.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing non-emergency medical transportation (NEMT) (*Louisiana Register*, Volume 20, Number 10). The department promulgated an Emergency Rule which repealed the October 20, 1994 Rule in order to revise the provisions governing NEMT services, and to ensure that these provisions are appropriately promulgated in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule also amended the provisions governing the reimbursement methodology for NEMT services to replace the monthly payment of capitated rates with a monthly per trip payment methodology (*Louisiana Register*, Volume 40, Number 10). This Emergency Rule is being promulgated in order to continue the provisions of the October 1, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to non-emergency medical transportation services.

Effective January 30, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter A. General Provisions
§501. Introduction

A. Non-emergency medical transportation (NEMT) is non-emergency transportation to and from the providers of routine Medicaid covered services for Medicaid recipients. NEMT is intended to provide transportation only after all reasonable means of free transportation have been explored and found to be unavailable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§503. Prior Authorization

A. NEMT services require prior authorization. The department or its designee will authorize transportation after verifying the recipient's Medicaid eligibility and validity of medical appointment(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§505. Requirements for Coverage

A. When transportation is not available through family and friends, payment shall be authorized for the least costly means of transportation available. The least costly means of transportation shall be determined by the department and shall be determined according to the following hierarchy:

1. city or parish public transportation;

2. family and friends who meet the state license and insurance requirements and who are willing to:

a. enroll in the Medicaid Program; and

b. be paid a published rate for providing non-emergency transportation;

3. intrastate public conveyance (such as bus, train or plane);

4. nonprofit agencies and organizations that provide a transportation service and who are enrolled in the Medicaid Program; and

5. for profit providers enrolled in the Medicaid Program.

B. Recipients shall be allowed a choice of providers when the costs of two or more providers are equal.

C. Recipients are encouraged to utilize medical providers of their choice in the community in which they reside when the recipient is also in need of Medicaid reimbursed transportation services. The fact that the department will still pay for the actual medical service received outside the community in which the recipient resides does not obligate the department to reimburse for transportation to accommodate such a choice.

D. When the recipient chooses to utilize a medical provider outside of the community due to preference and/or history, payment may be authorized only for the cost of transportation to the nearest available provider.

E. The recipient may be responsible for securing any agreements with family and friends, nonprofit or profit providers to make the longer trip for the payment authorized. If the recipient needs help with making such arrangements, the department will help but the help given will imply no obligation to provide a greater reimbursement.

F. When specialty treatment required by the recipient necessitates travel over extended distances, authorization for payment for intrastate transportation shall be determined according to the following criteria.

1. Intrastate transportation reimbursement shall be authorized when medical services are not available to the recipient in his/her community.

2. Payment shall be authorized when free transportation is not available.

3. The department shall still authorize payment only for the most economical means of transportation. This may be through negotiating payment for transportation with family and or friends or through accessing the public conveyance systems such as bus, train or plane.

4. The determination as to use of public conveyance shall be based on least cost, medical condition of the recipient to be transported, and availability of public conveyance.

G. When it has been verified that public conveyance is unavailable or inappropriate for intrastate transportation the recipient shall solicit transportation from family and friends. The department will authorize payment to assist the family in accessing the needed medical services.

1. Payment will be based on distance to be traveled to the nearest available similar or appropriate medical services, parking and tolls. In determining the amount of payment the cost of the least costly public conveyance shall be used as the base cost to be paid to the family. Payment shall not be available for room and board or meals.

H. When no other means of transportation is available through family and friends or public conveyance, the department will solicit intrastate transportation through a nonprofit provider.

1. The nonprofit provider will be paid a fee based on the current fee schedule.

2. If the nonprofit provider cannot accept the trip then the department will reimburse for-profit providers based on the current fee schedule.

I. The department will not authorize "same day" trips except in the instance of need for immediate medical care due to injury or illness. Same day trips will not be authorized for scheduled appointments for predictable or routine medical care. Recipients will be asked to reschedule the appointment and make the subsequent request for transportation timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter B. Recipient Responsibilities

§521. General Provisions

A. Recipients shall participate in securing transportation at a low cost and shall agree to use public transportation or solicit transportation from family and friends as an alternative to more costly means of transport.

B. When the recipient alleges that public conveyance cannot be used due to medical reasons, then verification shall be provided by giving the department a written statement from a doctor that includes the specific reason(s) that the use of public conveyance is contraindicated by the medical condition of the recipient. In no case can preference of the recipient be the sole determining factor in excluding use of public conveyance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter C. Provider Responsibilities

§541. Provider Enrollment

A. For-profit providers must comply with all state laws and the regulations of any other governing state agency or commission or local entity to which they are subject as a condition of enrollment and continued participation in the Medicaid Program.

B. Nonemergency medical transportation profit providers shall have a minimum liability insurance coverage of $100,000 per person and $300,000 per accident or a $300,000 combined service limits policy.

1. The liability policy shall cover any and all:
   a. autos;
   b. hired autos; and
   c. non-owned autos.

2. Premiums shall be prepaid for a period of six months. Proof of prepaid insurance must be a true and correct copy of the policy issued by the home office of the insurance company. Statements from the agent writing the policy will not be acceptable. Proof must include the dates of coverage and a 30 day cancellation notification clause. Proof of renewal must be received by the department no later than 48 hours prior to the end date of coverage. The policy must provide that the 30 day cancellation notification be issued to the Bureau of Health Services Financing.

3. Upon notice of cancellation or expiration of the coverage, the department will immediately cancel the provider agreement for participation. The ending date of participation shall be the ending date of insurance coverage. Retroactive coverage statements will not be accepted. Providers who lose the right to participate due to lack of prepaid insurance may re-enroll in the transportation program and will be subject to all applicable enrollment procedures, policies, and fees for new providers.

C. As a condition of reimbursement for transporting Medicaid recipients to medical services, family and friends must maintain the state minimum automobile liability insurance coverage, a current state inspection sticker, and a current valid driver's license. No special inspection by the department will be conducted. Proof of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the department is sought. Proof shall be the sworn and notarized statement of the individual enrolling for payment, certifying that all three requirements are met. Family and friends shall be enrolled and shall be allowed to transport up to three specific Medicaid recipients or all members of one Medicaid assistance unit. The recipients to be transported by each such provider will be noted in the computer files of the department. Individuals transporting more than three Medicaid recipients shall be considered profit providers and shall be enrolled as such.

D. As a condition of participation for out-of-state transport, providers of transportation to out-of-state medical services must be in compliance with all applicable federal intrastate commerce laws regarding such transportation, including but not limited to, the $1,000,000 insurance requirement. Proof of compliance with all interstate commerce laws must be submitted when enrollment in the Medicaid Program is sought or prior to providing any out-of-state Medicaid transportation.

E. A provider must agree to cover the entire parish or parishes for which he provides non-emergency medical transportation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§543. Trip Coordination

A. Dispatch personnel will coordinate to the extent possible, trips for family members so that all recipients in a family are transported as a unit at one time to the same or close proximity providers.

B. Providers must submit a signed affidavit with claims certifying that a true and correct bill is being submitted.

C. If the provider has declined to accept a trip on a particular day the dispatch personnel will not assign additional trips to that provider for that same day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§545. Provider Suspension and Termination

A. Providers are subject to suspension from the NEMT Program upon department documentation of inappropriate billing practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter D. Reimbursement

§565. General Provisions

A. Reimbursement for NEMT services shall be based upon the current fee schedule.

B. Reimbursement for NEMT to regular, predictable and continuing medical services, such as hemodialysis, chemotherapy or rehabilitation therapy, as determined by the department, shall be based on a capitated rate paid by individual trip.

C. Reimbursement will not be made for any additional person(s) who must accompany the recipient to the medical provider.

D. An individual provider will be reimbursed for a trip to the nearest facility that will meet the recipient's medical needs. However, the individual provider may transport the recipient to a more distant facility if the individual provider will accept reimbursement from the department to the nearest facility and assumes responsibility for additional expenses incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§573. Non-Emergency, Non-Ambulance Transportation

A. - F.5. ...

G. Effective for dates of service on or after October 1, 2014, the monthly payment of capitated rates shall be replaced with a per trip payment methodology.

1. Payments previously made using the monthly capitated rate shall be made by dividing the monthly rate by the number of authorized trips within a given month. Each trip will then be reimbursed separately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November

2010), LR 37:3030 (October 2011), amended LR 38:3214 (December 2012), LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Outpatient Hospital Services
Public-Private Partnerships
South Louisiana Area
(LAC 50:V.6703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.6703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility (*Louisiana Register*, Volume 39, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient services provided by non-state owned hospitals participating in public-private partnerships to establish payments for hospitals located in the Lafayette and New Orleans areas (*Louisiana Register*, Volume 39, Number 7).

The department promulgated an Emergency Rule which amended the provisions of the June 24, 2013 Emergency Rule to remove the New Orleans Area hospital which was erroneously included in these provisions (*Louisiana Register*, Volume 39, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective February 16, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50
PULIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 5. Outpatient Hospital Services
Chapter 67. Public-Private Partnerships
§6703. Reimbursement Methodology

A. - B.5. Reserved.

C. Baton Rouge Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals shall enter into a cooperative endeavor agreement with a non-state owned and operated hospital to increase its provision of outpatient Medicaid hospital services by providing services that were previously delivered and terminated by the state-owned and operated facility in Baton Rouge.

2. A quarterly supplemental payment may be made to this qualifying hospital for outpatient services based on dates of service on or after April 15, 2013. Payments may be made quarterly based on the annual upper payment limit calculation per state fiscal year. Maximum payments shall not exceed the upper payment limit per 42 CFR 447.321.

D. Lafayette Area Cooperative Endeavor Agreement

1. The Department of Health and Hospitals shall enter into a cooperative endeavor agreement with a non-state owned and operated hospital to increase its provision of outpatient Medicaid hospital services by assuming the management and operation of services at a facility in Lafayette where such services were previously provided by a state owned and operated facility.

2. Effective for dates of service on or after June 24, 2013, a quarterly supplemental payment may be made to this qualifying hospital for outpatient services. Payments may be made quarterly based on the annual upper payment limit calculation per state fiscal year. Maximum payments shall not exceed the upper payment limit per 42 CFR 447.321.

E. - E.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR: 41

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#051

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Benefits Management Program
Methods of Payment
(LAC 50:XXIX.105 and Chapter 9)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby rescinds the provisions of the November 1, 2012 Emergency Rule which revised the reimbursement methodology for pharmacy services covered under the Medical Assistance Program as authorized by R.S. 36:254. This Emergency Rule was adopted on October 19, 2012 and published in the November 20, 2012 edition of the *Louisiana Register*. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for prescription drugs to Medicaid eligible recipients enrolled in the Medicaid Program. The department promulgated an Emergency Rule which amended the provisions of the September 5, 2012 Emergency Rule to further revise the provisions governing the methods of payment for prescription drugs and the dispensing fee (*Louisiana Register*, Volume 38, Number 11).

Upon further consideration and consultation with the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS) on the corresponding Medicaid State Plan Amendment, the department determined that it was necessary to rescind the provisions of the November 1, 2012 Emergency Rule governing the reimbursement methodology for services rendered in the Pharmacy Benefits Management Program, and to return to the reimbursement rates in effect on September 5, 2012 which is consistent with the currently approved Medicaid State Plan (*Louisiana Register*, Volume 40, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2014 Emergency Rule.

Effective January 30, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds the Emergency Rule governing pharmacy services which appeared in the November 20, 2013 edition of the *Louisiana Register* on pages 2725-2728.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#052

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Benefits Management Program
State Supplemental Rebate Agreement Program
(LAC 50:XXIX.Chapter 11)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXIX.Chapter 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid coverage of prescription drugs through its Pharmacy Benefits Management Program. The department amended the provisions governing the Pharmacy Benefits Management Program in order to establish provisions for the Medicaid Program's participation in The Optimal PDL $olution (TOP$) State Supplemental Rebate Agreement Program which is a multi-state Medicaid state supplemental drug rebate pooling initiative (*Louisiana Register*, Volume 39, Number 10). This program allows states to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates than could be achieved independently. It is anticipated that this program will lower the net cost of brand drugs and the overall dollars spent on pharmacy benefits. The department promulgated an Emergency Rule to assure compliance with the technical requirements of R.S. 49:953, and to continue the provisions of the October 1, 2013 Emergency Rule governing the Pharmacy Benefits Management Program which established provisions for the Medicaid Program's participation in The Optimal PDL $olution (TOP$) State Supplemental Rebate Agreement Program (*Louisiana Register*, Volume 40, Number 3). This Emergency Rule is being promulgated to continue the provisions of the February 22, 2014 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective February 20, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Medicaid coverage of prescription drugs to establish provisions for participation in TOP$ State Supplemental Rebate Agreement Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy
Chapter 11. State Supplemental Rebate Agreement Program
§1101. General Provisions

A. Effective October 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing hereby establishes provisions for participation in The Optimal PDL $olution (TOP$) State Supplemental Rebate Agreement (SRA) Program. TOP$ is a multi-state Medicaid state supplemental drug rebate pooling initiative approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services and administered by Provider Synergies, L.L.C/Magellan Medicaid Administration. The purpose of this program is to allow states the opportunity to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates and discounts from prescription drug companies than could be achieved independently.

B. Pursuant to R.S. 46:153.3, the department shall enter into a contractual agreement with Provider Synergies to participate in TOP$. Provider Synergies/Magellan Medicaid Administration will act on the department's behalf to provide the necessary administration services relative to this agreement for the provision of state supplemental drug rebate contracting and preferred drug list administration services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#053

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Professional Services Program
Immunizations
Reimbursement Methodology
(LAC 50:IX.8305 and 8505)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.8305 and §8505 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health (OPH) adopted provisions to establish Medicaid payment of uncompensated care costs for the administration of vaccines rendered by OPH to Medicaid eligible recipients (*Louisiana Register*, Volume 39, Number 1).

The Patient Protection and Affordable Care Act (PPACA) requires states to reimburse certain primary care services, including the administration of specified immunizations (if they were covered), at an increased rate. In compliance with PPACA and federal regulations, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for Medicaid payments to providers for the administration of certain vaccines to children to increase the reimbursement rates (*Louisiana Register*, Volume 39, Number 1). The provisions governing an increase in rates for the administration of certain vaccines to adults were inadvertently omitted from the January 1, 2013 Emergency Rule. The department promulgated an Emergency Rule which amended the January 1, 2013 Emergency Rule in order to incorporate provisions governing an increase in rates for the administration of certain vaccines to adults and to revise the payment methodology (*Louisiana Register*, Volume 39, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2013 Emergency Rule. This action is being taken to avoid federal sanctions and to secure enhanced federal funding.

Effective February 16, 2015 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the administration of immunizations.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 7. Immunizations
Chapter 83. Children's Immunizations
§8305. Reimbursement Methodology

A. - C.3.a. ...

D. Effective for dates of service on or after January 1, 2013 through December 31, 2014, certain vaccine administration services shall be reimbursed at payment rates consistent with the methodologies that apply to such services and physicians under Part B of Title XVIII of the Social Security Act (Medicare) and the Vaccines for Children (VFC) Program.

1. The following vaccine service codes, when covered by the Medicaid Program and provided under the VFC Program, shall be reimbursed at an increased rate:

a. 90471, 90472, 90473 and 90474; or

b. their successor codes as specified by the U.S. Department of Health and Human Services.

2. Qualifying Criteria. Reimbursement shall be limited to specified services furnished by a physician, either a doctor of osteopathy or a medical doctor or under the personal supervision of a physician, who attests to a specialty or subspecialty designation in family medicine, general internal medicine or pediatrics, and also attests to meeting one or more of the following criteria:

a. certification as a specialist or subspecialist within family medicine, general internal medicine or pediatric medicine by the American Board of Medical Specialists

(ABMS), the American Board of Physician Specialties (ABPS), or the American Osteopathic Association (AOA); or

b. specified evaluation and management and vaccine services that equal at least 60 percent of total Medicaid codes paid during the most recently completed calendar year, or for newly eligible physicians the prior month.

3. Payment Methodology. For vaccine administration services provided under the Vaccines for Children Program in calendar years 2013 and 2014, the reimbursement shall be the lesser of the:

a. regional maximum administration fee; or

b. Medicare fee schedule rate in calendar years 2013 or 2014 that reflects the mean value over all parishes (counties) of the rate for each of the specified code(s) or, if greater, the payment rates that would be applicable in those years using the calendar year 2009 Medicare physician fee schedule conversion factor multiplied by the calendar year 2013 and 2014 relative value units in accordance with 42 CFR 447.405 as approved by the Centers for Medicare and Medicaid Services.

4. The department shall make a payment to the provider for the difference between the Medicaid rate and the increased rate, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:71 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:96 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 85. Adult Immunizations

§8505. Reimbursement Methodology

A. - B.3.a. …

C. Effective for dates of service on or after January 1, 2013 through December 31, 2014, certain vaccine administration services shall be reimbursed at payment rates consistent with the methodology that applies to such services and physicians under Part B of Title XVIII of the Social Security Act (Medicare).

1. The following vaccine service codes, when covered by the Medicaid Program, shall be reimbursed at an increased rate:

a. 90471, 90472, 90473 and 90474; or

b. their successor codes as specified by the U.S. Department of Health and Human Services.

2. Qualifying Criteria. Reimbursement shall be limited to specified services furnished by a physician, either a doctor of osteopathy or a medical doctor or under the personal supervision of a physician, who attests to a specialty or subspecialty designation in family medicine, general internal medicine or pediatrics, and also attests to meeting one or more of the following criteria:

a. certification as a specialist or subspecialist within family medicine, general internal medicine or pediatric medicine by the American Board of Medical Specialists (ABMS), the American Board of Physician Specialties (ABPS), or the American Osteopathic Association (AOA); or

b. specified evaluation and management and vaccine services that equal at least 60 percent of total Medicaid codes paid during the most recently completed calendar year, or for newly eligible physicians the prior month.

3. Payment Methodology. For vaccine administration services provided in calendar years 2013 and 2014, the reimbursement shall be the lesser of the:

a. Medicare fee schedule rate in calendar years 2013 or 2014 that reflects the mean value over all parishes (counties) of the rate for each of the specified code(s) or, if greater, the payment rates that would be applicable in those years using the calendar year 2009 Medicare physician fee schedule conversion factor multiplied by the calendar year 2013 and 2014 relative value units in accordance with 42 CFR 447.405 as approved by the Centers for Medicare and Medicaid Services; or

b. provider's actual billed charges for the service.

4. The department shall make a payment to the provider for the difference between the Medicaid rate and the increased rate, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:97 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#054

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Rehabilitation Clinics
Physical and Occupational Therapies
Reimbursement Rate Increase
(LAC 50:XI.301 and 303)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.301 and §303 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement for physical, occupational and speech

therapies provided in rehabilitation clinics to recipients under the age of 21.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing rehabilitation clinics in order to terminate the coverage and Medicaid reimbursement of services rendered to recipients 21 years of age and older (*Louisiana Register*, Volume 39, Number 1). In compliance with a court order from the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the reimbursement methodology for rehabilitation clinics in order to increase the reimbursement rates for physical and occupational therapy services rendered to recipients under the age of 21 (*Louisiana Register*, Volume 40, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 13, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to therapy services provided by rehabilitation clinics.

Effective February 11, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for rehabilitation clinics in order to increase the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 1. Rehabilitation Clinics
Chapter 3. Reimbursement
§301. Reimbursement Methodology

A. The Medicaid Program provides reimbursement for physical therapy, occupational therapy and speech therapy rendered in rehabilitation clinics to recipients under the age of 21.

B. Effective for dates of service on or after February 1, 2013, reimbursement shall not be made for services rendered to recipients 21 years of age and older.

C. Effective for dates of service on or after February 13, 2014, reimbursement for physical and occupational therapy services shall be 85 percent of the 2013 Medicare published rate. There shall be no automatic enhanced rate adjustment for physical and occupational therapy services.

D. Speech/language therapy services shall continue to be reimbursed at the flat fee in place as of February 13, 2014 and in accordance with the Medicaid published fee schedule for speech/language therapy services provided to recipients under the age of 21 in rehabilitation clinics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1021 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§303. Reimbursement (Ages 0 up to 3)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1034 (May 2004), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#055

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

School Based Health Centers
Rehabilitation Services
Reimbursement Rate Increase
(LAC 50:XV.9141)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.9141 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to allow for Medicaid coverage and reimbursement of mental health services provided to students by School Based Health Centers and to establish provisions for other Medicaid-covered services students already receive (*Louisiana Register*, Volume 34, Number 7).

In compliance with a court order from the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for school based health centers in order to increase the reimbursement rates for physical and occupational therapy services (Louisiana Register, Volume 40, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 13, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to therapy services in school based health centers.

Effective February 10, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for school based health centers to increase the reimbursement rates for physical and occupational therapies.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment
Chapter 91. School Based Health Centers
Subchapter E. Reimbursement
§9141. Reimbursement Methodology

A. - B.2. ...

C. Effective for dates of service on or after February 13, 2014, reimbursement for physical and occupational therapy services shall be 85 percent of the 2013 Medicare published rate.

D. Speech/language therapy services shall continue to be reimbursed at the flat fee in place as of February 13, 2014 and in accordance with the Medicaid published fee schedule for speech/language therapy services provided in school based health centers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1420 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

1501#056

DECLARATION OF EMERGENCY

Department of Natural Resources
Office of Conservation

Statewide Orders No. 29-B and 29-B-a
(LAC 43:XIX.Chapters 2 and 11)

Order extending the deadline of drilling and completion operational and safety requirements for wells drilled in search or for the production of oil or natural gas at water locations.

Pursuant to the power delegated under the laws of the State of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, Title 49, Sections 953(B)(1) and (2), 954(B)(2), as amended, the following emergency rule and reasons therefore are now adopted and promulgated by the Commissioner of Conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by extending the effectiveness of the emergency rule this rule supersedes the previous emergency rule for drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. The following emergency rule provides for Commissioner of Conservation approved exceptions to equipment requirements on workover operations. Furthermore, the extension of the rule allows more time to complete comprehensive rule amendments.

A. Need and Purpose for Emergency Rule

In light of the Gulf of Mexico Deepwater Horizon oil spill incident in federal waters approximately fifty miles off Louisiana's coast and the threat posed to the natural resources of the State, and the economic livelihood and property of the citizens of the State caused thereby, the Office of Conservation began a review of its current drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. While the incidents of blowout of Louisiana wells is minimal, occurring at less than three-tenths of one percent of the wells drilled in Louisiana since 1987, the great risk posed by blowouts at water locations to the public health, safety and welfare of the people of the State, as well as the environment generally, necessitated the rule amendments contained herein.

After implementation of the Emergency Rule, Conservation formed an ad hoc committee to further study comprehensive rulemaking in order to promulgate new permanent regulations which ensure increased operational and safety requirements for the drilling or completion of oil and gas wells at water locations within the State. Based upon the work of this ad hoc committee, draft proposed rules that would replace these emergency rules are being created for the consideration and comment by interested parties. These draft proposed rules were published in the Potpourri Section of the Louisiana State Register on July 20, 2012. Rule promulgation is expected to continue with revised draft rules being published as a Notice of Intent within the next sixty days.

B. Synopsis of Emergency Rule

The Emergency Rule set forth hereinafter is intended to provide greater protection to the public health, safety and welfare of the people of the State, as well as the environment generally by extending the effectiveness of new operational and safety requirements for the drilling and completion of oil and gas wells at water locations. Following the Gulf of Mexico-Deepwater Horizon oil spill, the Office of Conservation ("Conservation") investigated the possible expansion of Statewide Orders No. 29-B and 29-B-a requirements relating to well control at water locations. As part of the rule expansion project, Conservation reviewed the well control regulations of the U.S. Department of the Interior's Mineral Management Service or MMS (now named the Bureau of Safety and Environmental Enforcement). Except in the instances where it was determined that the MMS provisions were repetitive of other provisions already being incorporated, were duplicative of existing Conservation regulations or were not applicable to the situations encountered in Louisiana's waters, all provisions of the MMS regulations concerning well control issues at water locations were adopted by the preceding Emergency Rules, which this rule supersedes, integrated into Conservation's Statewide Orders No. 29-B and 29-B-a.

Conservation is currently performing a comprehensive review of its regulations as it considers future amendments to its operational rules and regulations found in Statewide

Order No. 29-B and elsewhere. Specifically, the Emergency Rule extends the effectiveness of a new Chapter within Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) to provide additional rules concerning the drilling and completion of oil and gas wells at water locations, specifically providing for the following: rig movement and reporting requirements, additional requirements for applications to drill, casing program requirements, mandatory diverter systems and blowout preventer requirements, oil and gas well-workover operations, diesel engine safety requirements, and drilling fluid regulations. Further, the Emergency Rule amends Statewide Order No. 29-B-a (LAC 43:XIX.Chapter 11) to provide for and expand upon rules concerning the required use of storm chokes in oil and gas wells at water locations.

C. Reasons

Recognizing the potential advantages of expanding the operational and safety requirements for the drilling and completion of oil and gas wells at water locations within the State, it has been determined that failure to establish such requirements in the form of an administrative rule may lead to the existence of an imminent peril to the public health, safety and welfare of the people of the State of Louisiana, as well as the environment generally. By this rule Conservation extends the effectiveness of the following requirements until such time as final comprehensive rules may be promulgated.

Protection of the public and our environment therefore requires the Commissioner of Conservation to extend the following rules in order to assure that drilling and completion of oil and gas wells at water locations within the State are undertaken in accordance with all reasonable care and protection to the health, safety of the public, oil and gas personnel and the environment generally. The emergency rule, Amendment to Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) and Statewide Order No. 29-B-a (LAC 43:XIX Chapter 11) ("EMERGENCY RULE") set forth hereinafter are adopted and extended by the Office of Conservation.

D. Effective Date and Duration

The effective date for this Emergency Rule shall be December 19, 2014. This Emergency Rule is a continuation of the September 19, 2014 Emergency Rule. The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, or until the adoption of the final version of an amendment to Statewide Order No. 29-B and Statewide Order No. 29-B-a as noted herein, whichever occurs first.

The Emergency Rule signed by the commissioner on September 19, 2014, 2014 is hereby rescinded and replaced by the following Emergency Rule.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 2. Additional Requirements for Water Locations

§201. Applicability

A. In addition to the requirements set forth in Chapter 1 of this Subpart, all oil and gas wells being drilled or completed at a water location within the State and which are spud or on which workover operations commence on or after July 15, 2010 shall comply with this Chapter.

B. Unless otherwise stated herein, nothing within this Chapter shall alter the obligation of oil and gas operators to meet the requirements of Chapter 1 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§203. Application to Drill

A. In addition to the requirements set forth in Section 103 of this Subpart, at the time of submittal of an application for permit to drill, the applicant will provide an electronic copy on a disk of the associated drilling rig's Spill Prevention Control (SPC) plan that is required by DEQ pursuant to the provisions of Part IX of Title 33 of the Louisiana Administrative Code or any successor rule. Such plan shall become a part of the official well file. If the drilling rig to be used in drilling a permitted well changes between the date of the application and the date of drilling, the applicant shall provide an electronic copy on a disk of the SPC plan for the correct drilling rig within two business days of becoming aware of the change in rigs; but in no case shall the updated SPC plan be submitted after spudding of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§204. Rig Movement and Reporting

A. The operator must report the movement of all drilling and workover rig units on and off locations to the appropriate district manager with the rig name, well serial number and expected time of arrival and departure.

B. Drilling operations on a platform with producing wells or other hydrocarbon flow must comply with the following:

1. an emergency shutdown station must be installed near the driller's console;

2. all producible wells located in the affected wellbay must be shut in below the surface and at the wellhead when:

a. a rig or related equipment is moved on and off a platform. This includes rigging up and rigging down activities within 500 feet of the affected platform;

b. a drilling unit is moved or skid between wells on a platform;

c. a mobile offshore drilling unit (MODU) moves within 500 feet of a platform;

3. production may be resumed once the MODU is in place, secured, and ready to begin drilling operations.

C. The movement of rigs and related equipment on and off a platform or from well to well on the same platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving well-completion rigs and related equipment, unless otherwise approved by the district manager. A closed surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation. The well from which the rig or related equipment is to be moved shall also be equipped with a back-pressure

valve prior to removing the blowout preventer (BOP) system and installing the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§205. Casing Program

A. General Requirements

1. The operator shall case and cement all wells with a sufficient number of strings of casing and quantity and quality of cement in a manner necessary to prevent fluid migration in the wellbore, protect the underground source of drinking water (USDW) from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids.

2. The operator shall install casing necessary to withstand collapse, bursting, tensile, and other stresses that may be encountered and the well shall be cemented in a manner which will anchor and support the casing. Safety factors in casing program design shall be of sufficient magnitude to provide optimum well control while drilling and to assure safe operations for the life of the well.

3. All tubulars and cement shall meet or exceed API standards. Cementing jobs shall be designed so that cement composition, placement techniques, and waiting times ensure that the cement placed behind the bottom 500 feet of casing attains a minimum compressive strength of 500 psi before drilling out of the casing or before commencing completion operations.

4. Centralizers

a. Surface casing shall be centralized by means of placing centralizers in the following manner:

i. a centralizer shall be placed on every third joint from the shoe to surface, with two centralizers being placed on each of the lowermost three joints of casing;

ii. if conductor pipe is set, three centralizers shall be equally spaced on surface casing to fall within the conductor pipe.

b. Intermediate and production casing, and drilling and production liners shall be centralized by means of a centralizer placed every third joint from the shoe to top of cement. Additionally, two centralizers shall be placed on each of the lowermost three joints of casing.

c. All centralizers shall meet API standards.

5. A copy of the documentation furnished by the manufacturer, if new, or supplier, if reconditioned, which certifies tubular condition, shall be provided with the Well History and Work Resume Report (Form WH-1).

B. Conductor Pipe. A conductor pipe is that pipe ordinarily used for the purpose of supporting unconsolidated surface deposits. A conductor pipe shall be used during the drilling of any oil and gas well and shall be set at depth that allows use of a diverter system.

C. Surface Casing

1. Where no danger of pollution of the USDW exists, the minimum amount of surface ~~of~~ or first-intermediate casing to be set shall be determined from Table 1 hereof, except that in no case shall less surface casing be set than an amount needed to protect the USDW unless an alternative method of USDW protection is approved by the district manager.

Table 1

Total Depth of Contact	Casing Required	Surface Casing Test Pressure (lbs. per sq. in.)
0-2500	100	300
2500-3000	150	600
3000-4000	300	600
4000-5000	400	600
5000-6000	500	750
6000-7000	800	1000
7000-8000	1000	1000
8000-9000	1400	1000
9000-Deeper	1800	1000

a. In known low-pressure areas, exceptions to the above may be granted by the commissioner or his agent. if, however, in the opinion of the commissioner, or his agent, the above regulations shall be found inadequate, and additional or lesser amount of surface casing and/or test pressure shall be required for the purpose of safety and the protection of the USDW.

2. Surface casing shall be cemented with a sufficient volume of cement to insure cement returns to the surface.

3. Surface casing shall be tested before drilling the plug by applying a minimum pump pressure as set forth in Table 1 after at least 200 feet of the mud-laden fluid has been displaced with water at the top of the column. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of test pressure as outlined in Table 1, the operator shall be required to take such corrective measures as will insure that such surface casing will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure. The provisions of Paragraph E.7, below, for the producing casing, shall also apply to the surface casing.

4. Cement shall be allowed to stand a minimum of 12 hours under pressure before initiating test or drilling plug. Under pressure is complied with if one float valve is used or if pressure is held otherwise.

D. Intermediate Casing/Drilling Liner

1. Intermediate casing is that casing used as protection against caving of heaving formations or when other means are not adequate for the purpose of segregating upper oil, gas or water-bearing strata. Intermediate casing/drilling liner shall be set when required by abnormal pressure or other well conditions.

2. If an intermediate casing string is deemed necessary by the district manager for the prevention of underground waste, such regulations pertaining to a minimum setting depth, quality of casing, and cementing and testing of sand, shall be determined by the Office of Conservation after due hearing. The provisions of Paragraph E.7 below, for the producing casing, shall also apply to the intermediate casing.

3. Intermediate casing/drilling liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as an

intermediate string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The drilling liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. Before drilling the plug in the intermediate string of casing, the casing shall be tested by pump pressure, as determined from Table 2 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

Table 2. Intermediate Casing and Liner	
Depth Set	**Test Pressure (lbs. per sq. in.)**
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. If the test is unsatisfactory, the operator shall not proceed with the drilling of the well until a satisfactory test has been obtained.

E. Producing String

1. Producing string, production casing or production liner is that casing used for the purpose of segregating the horizon from which production is obtained and affording a means of communication between such horizons and the surface.

2. The producing string of casing shall consist of new or reconditioned casing, tested at mill test pressure or as otherwise designated by the Office of Conservation.

3. Cement shall be by the pump-and-plug method, or another method approved by the Office of Conservation. Production casing/production liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as a producing string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The production liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. The amount of cement to be left remaining in the casing, until the requirements of Paragraph 5 below have been met, shall be not less than 20 feet. This shall be accomplished through the use of a float-collar, or other approved or practicable means, unless a full-hole cementer, or its equivalent, is used.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test in the producing or oil string. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. Before drilling the plug in the producing string of casing, the casing shall be tested by pump pressure, as determined from Table 3 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

Table 3. Producing String	
Depth Set	**Test Pressure (lbs. per sq. in.)**
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that the producing string of casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

7. If the commissioner's agent is not present at the time designated by the operator for inspection of the casing tests of the producing string, the operator shall have such tests witnessed, preferably by an offset operator. An affidavit of test, on the form prescribed by the district office, signed by the operator and witness, shall be furnished to the district office showing that the test conformed satisfactorily to the above mentioned regulations before proceeding with the completion. If test is satisfactory, normal operations may be resumed immediately.

8. If the test is unsatisfactory, the operator shall not proceed with the completion of the well until a satisfactory test has been obtained.

F. Cement Evaluation

1. Cement evaluation tests (cement bond or temperature survey) shall be conducted for all casing and

liners installed below surface casing to assure compliance with LAC 43:XIX.205.D.3 and E.3.

2. Remedial cementing operations that are required to achieve compliance with LAC 43:XIX.205.D.3 and E.3 shall be conducted following receipt of an approved work permit from the district manager for the proposed operations.

3. Cementing and wireline records demonstrating the presence of the required cement tops shall be retained by the operator for a period of two years.

G. Leak-Off Tests

1. A pressure integrity test must be conducted below the surface casing or liner and all intermediate casings or liners. The district manager may require a pressure-integrity test at the conductor casing shoe if warranted by local geologic conditions or the planned casing setting depth. Each pressure integrity test must be conducted after drilling at least 10 feet but no more than 50 feet of new hole below the casing shoe and must be tested to either the formation leak-off pressure or to the anticipated equivalent drilling fluid weight at the setting depth of the next casing string.

a. The pressure integrity test and related hole-behavior observations, such as pore-pressure test results, gas-cut drilling fluid, and well kicks must be used to adjust the drilling fluid program and the setting depth of the next casing string. All test results must be recorded and hole-behavior observations made during the course of drilling related to formation integrity and pore pressure in the driller's report.

b. While drilling, a safe drilling margin must be maintained. When this safe margin cannot be maintained, drilling operations must be suspended until the situation is remedied.

H. Prolonged Drilling Operations

1. If wellbore operations continue for more than 30 days within a casing string run to the surface:

a. drilling operations must be stopped as soon as practicable, and the effects of the prolonged operations on continued drilling operations and the life of the well evaluated. At a minimum, the operator shall:

i. caliper or pressure test the casing; and

ii. report evaluation results to the district manager and obtain approval of those results before resuming operations.

b. If casing integrity as determined by the evaluation has deteriorated to a level below minimum safety factors, the casing must be repaired or another casing string run. Approval from the district manager shall be obtained prior to any casing repair activity.

I. Tubing and Completion

1. Well-completion operations means the work conducted to establish the production of a well after the production-casing string has been set, cemented, and pressure-tested.

2. Prior to engaging in well-completion operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review by the Office of Conservation.

3. When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

4. No tubing string shall be placed in service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

5. A valve, or its equivalent, tested to a pressure of not less than the calculated bottomhole pressure of the well, shall be installed below any and all tubing outlet connections.

6. When a well develops a casing pressure, upon completion, equivalent to more than three-quarters of the internal pressure that will develop the minimum yield point of the casing, such well shall be required by the district manager to be killed, and a tubing packer to be set so as to keep such excessive pressure off of the casing.

7. Wellhead Connections. Wellhead connections shall be tested prior to installation at a pressure indicated by the District Manager in conformance with conditions existing in areas in which they are used. Whenever such tests are made in the field, they shall be witnessed by an agent of the Office of Conservation. Tubing and tubingheads shall be free from obstructions in wells used for bottomhole pressure test purposes.

8. When the tree is installed, the wellhead shall be equipped so that all annuli can be monitored for sustained pressure. If sustained casing pressure is observed on a well, the operator shall immediately notify the district manager.

9. Wellhead, tree, and related equipment shall have a pressure rating greater than the shut-in tubing pressure and shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve, installed above the master valve, in the vertical run of the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§207. Diverter Systems and Blowout Preventers

A. Diverter System. A diverter system shall be required when drilling surface hole in areas where drilling hazards are known or anticipated to exist. The district manager may, at his discretion, require the use of a diverter system on any well. In cases where it is required, a diverter system consisting of a diverter sealing element, diverter lines, and control systems must be designed, installed, used, maintained, and tested to ensure proper diversion of gases, water, drilling fluids, and other materials away from facilities and personnel. The diverter system shall be designed to incorporate the following elements and characteristics:

1. dual diverter lines arranged to provide for maximum diversion capability;

2. at least two diverter control stations. One station shall be on the drilling floor. The other station shall be in a readily accessible location away from the drilling floor;

3. remote-controlled valves in the diverter lines. All valves in the diverter system shall be full-opening.

Installation of manual or butterfly valves in any part of the diverter system is prohibited;

4. minimize the number of turns in the diverter lines, maximize the radius of curvature of turns, and minimize or eliminate all right angles and sharp turns;

5. anchor and support systems to prevent whipping and vibration;

6. rigid piping for diverter lines. The use of flexible hoses with integral end couplings in lieu of rigid piping for diverter lines shall be approved by the district manager.

B. Diverter Testing Requirements

1. When the diverter system is installed, the diverter components including the sealing element, diverter valves, control systems, stations and vent lines shall be function and pressure tested.

2. For drilling operations with a surface wellhead configuration, the system shall be function tested at least once every 24-hour period after the initial test.

3. After nippling-up on conductor casing, the diverter sealing element and diverter valves are to be pressure tested to a minimum of 200 psig. Subsequent pressure tests are to be conducted within seven days after the previous test.

4. Function tests and pressure tests shall be alternated between control stations.

5. Recordkeeping Requirements

a. Pressure and function tests are to be recorded in the driller's report and certified (signed and dated) by the operator's representative.

b. The control station used during a function or pressure test is to be recorded in the driller's report.

c. Problems or irregularities during the tests are to be recorded along with actions taken to remedy same in the driller's report.

d. All reports pertaining to diverter function and/or pressure tests are to be retained for inspection at the wellsite for the duration of drilling operations.

C. BOP Systems. The operator shall specify and insure that contractors design, install, use, maintain and test the BOP system to ensure well control during drilling, workover and all other appropriate operations. The surface BOP stack shall be installed before drilling below surface casing.

1. BOP system components for drilling activity located over a body of water shall be designed and utilized, as necessary, to control the well under all potential conditions that might occur during the operations being conducted and at minimum, shall include the following components:

a. annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. two sets of hydraulically-operated pipe rams.

2. Drilling activity with a tapered drill string shall require the installation of two or more sets of conventional or variable-bore pipe rams in the BOP stack to provide, at minimum, two sets of rams capable of sealing around the larger-size drill string and one set of pipe rams capable of sealing around the smaller-size drill string.

3. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

4. All connections used in the surface BOP system must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

5. The Commissioner of Conservation, following a public hearing, may grant exceptions to the requirements of LAC 43:XIX.207.C-J.

D. BOP Working Pressure. The working pressure rating of any BOP component, excluding annular-type preventers, shall exceed the maximum anticipated surface pressure (MASP) to which it may be subjected.

E. BOP Auxiliary Equipment. All BOP systems shall be equipped and provided with the following:

1. a hydraulically actuated accumulator system which shall provide 1.5 times volume of fluid capacity to close and hold closed all BOP components, with a minimum pressure of 200 psig above the pre-charge pressure without assistance from a charging system;

2. a backup to the primary accumulator-charging system, supplied by a power source independent from the power source to the primary, which shall be sufficient to close all BOP components and hold them closed;

3. accumulator regulators supplied by rig air without a secondary source of pneumatic supply shall be equipped with manual overrides or other devices to ensure capability of hydraulic operation if the rig air is lost;

4. at least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor. If a BOP control station does not perform properly, operations shall be suspended until that station is operable;

5. a drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines;

6. a kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. The choke line shall be installed above the bottom ram. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore;

7. a valve installed below the swivel (upper kelly cock), essentially full-opening, and a similar valve installed at the bottom of the kelly (lower kelly cock). An operator must be able to strip the lower kelly cock through the BOP stack. A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew. If drilling with a mud motor and utilizing drill pipe in lieu of a kelly, you must install one kelly valve above, and one strippable kelly valve below the joint of pipe used in place of a kelly. On a top-drive system equipped with a remote-controlled valve, you must install a strippable kelly-type valve below the remote-controlled valve;

8. an essentially full-opening drill-string safety valve in the open position on the rig floor shall be available at all

times while drilling operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew;

9. a safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string being run in the hole;

10. locking devices installed on the ram-type preventers.

F. BOP Maintenance and Testing Requirements

1. The BOP system shall be visually inspected on a daily basis.

2. Pressure tests (low and high pressure) of the BOP system are to be conducted at the following times and intervals:

a. during a shop test prior to transport of the BOPs to the drilling location. Shop tests are not required for equipment that is transported directly from one well location to another;

b. immediately following installation of the BOPs;

c. within 14 days of the previous BOP pressure test, alternating between control stations and at a staggered interval to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional, system is operable. Exceptions may be granted by the district manager in cases where a trip is scheduled to occur within 2 days after the 14-day testing deadline;

d. before drilling out each string of casing or liner (The district manager may require that a conservation enforcement specialist witness the test prior to drilling out each casing string or liner);

e. Not more than 48 hours before a well is drilled to a depth that is within 1000 feet of a hydrogen sulfide zone (The district manager may require that a conservation enforcement specialist witness the test prior to drilling to a depth that is within 1000 feet of a hydrogen sulfide zone);

f. when the BOP tests are postponed due to well control problem(s), the BOP test is to be performed on the first trip out of the hole, and reasons for postponing the testing are to be recorded in the driller's report.

3. Low pressure tests (200-300 psig) of the BOP system (choke manifold, kelly valves, drill-string safety valves, etc.) are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2. in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Variable bore pipe rams are to be tested against the largest and smallest sizes of pipe in use, excluding drill collars and bottom hole assembly.

c. Bonnet seals are to be tested before running the casing when casing rams are installed in the BOP stack.

4. High pressure tests of the BOP system are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2 in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Ram-type BOP's, choke manifolds, and associated equipment are to be tested to the rated working pressure of the equipment or 500 psi greater than the calculated MASP for the applicable section of the hole.

c. Annular-type BOPs are to be tested to 70 percent of the rated working pressure of the equipment.

5. The annular and ram-type BOPs with the exception of the blind-shear rams are to be function tested every seven days between pressure tests. All BOP test records should be certified (signed and dated) by the operator's representative.

a. Blind-shear rams are to be tested at all casing points and at an interval not to exceed 30 days.

6. If the BOP equipment does not hold the required pressure during a test, the problem must be remedied and a retest of the affected component(s) performed. Additional BOP testing requirements:

a. use water to test the surface BOP system;

b. if a control station is not functional operations shall be suspended until that station is operable;

c. test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly.

G. BOP Record Keeping. The time, date and results of pressure tests, function tests, and inspections of the BOP system are to be recorded in the driller's report. All pressure tests shall be recorded on an analog chart or digital recorder. All documents are to be retained for inspection at the wellsite for the duration of drilling operations and are to be retained in the operator's files for a period of two years.

H. BOP Well Control Drills. Weekly well control drills with each drilling crew are to be conducted during a period of activity that minimizes the risk to drilling operations. The drills must cover a range of drilling operations, including drilling with a diverter (if applicable), on-bottom drilling, and tripping. Each drill must be recorded in the driller's report and is to include the time required to close the BOP system, as well as, the total time to complete the entire drill.

I. Well Control Safety Training. In order to ensure that all drilling personnel understand and can properly perform their duties prior to drilling wells which are subject to the jurisdiction of the Office of Conservation, the operator shall require that contract drilling companies provide and/or implement the following:

1. periodic training for drilling contractor employees which ensures that employees maintain an understanding of, and competency in, well control practices;

2. procedures to verify adequate retention of the knowledge and skills that the contract drilling employees need to perform their assigned well control duties.

J. Well Control Operations

1. The operator must take necessary precautions to keep wells under control at all times and must:

a. use the best available and safest drilling technology to monitor and evaluate well conditions and to minimize the potential for the well to flow or kick;

b. have a person onsite during drilling operations who represents the operators interests and can fulfill the operators responsibilities;

c. ensure that the tool pusher, operator's representative, or a member of the drilling crew maintains continuous surveillance on the rig floor from the beginning of drilling operations until the well is completed or abandoned, unless you have secured the well with blowout preventers (BOPs), bridge plugs, cement plugs, or packers;

d. use and maintain equipment and materials necessary to ensure the safety and protection of personnel, equipment, natural resources, and the environment.

2. Whenever drilling operations are interrupted, a downhole safety device must be installed, such as a cement plug, bridge plug, or packer. The device must be installed at an appropriate depth within a properly cemented casing string or liner.

a. Among the events that may cause interruption to drilling operations are:

i. evacuation of the drilling crew;

ii. inability to keep the drilling rig on location; or

iii. repair to major drilling or well-control equipment.

3. If the diverter or BOP stack is nippled down while waiting on cement, it must be determined, before nippling down, when it will be safe to do so based on knowledge of formation conditions, cement composition, effects of nippling down, presence of potential drilling hazards, well conditions during drilling, cementing, and post cementing, as well as past experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§209. Casing-Heads

A. All wells shall be equipped with casing-heads with a test pressure in conformance with conditions existing in areas in which they are used. Casing-head body, as soon as installed shall be equipped with proper connections and valves accessible to the surface. Reconditioning shall be required on any well showing pressure on the casing-head, or leaking gas or oil between the oil string and next larger size casing string, when, in the opinion of the district managers, such pressure or leakage assume hazardous proportions or indicate the existence of underground waste. Mud-laden fluid may be pumped between any two strings of casing at the top of the hole, but no cement shall be used except by special permission of the commissioner or his agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§211. Oil and Gas Well-Workover Operations

A. Definitions. When used in this section, the following terms shall have the meanings given below:

Expected Surface Pressure—the highest pressure predicted to be exerted upon the surface of a well. In calculating expected surface pressure, reservoir pressure as well as applied surface pressure must be considered.

Routine Operations—any of the following operations conducted on a well with the tree installed including cutting paraffin, removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations, bailing sand, pressure surveys, swabbing, scale or corrosion treatment, caliper and gauge surveys, corrosion inhibitor treatment, removing or replacing subsurface pumps, through-tubing logging, wireline fishing, and setting and retrieving other subsurface flow-control devices.

Workover Operations—the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

B. When well-workover operations are conducted on a well with the tree removed, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well or other hydrocarbon flow on the platform.

C. Prior to engaging in well-workover operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review.

D. Well-Control Fluids, Equipment, and Operations. The following requirements apply during all well-workover operations with the tree removed:

1. the minimum BOP-system components when the expected surface pressure is less than or equal to 5,000 psi shall include one annular-type well control component, one set of pipe rams, and one set of blind-shear rams. The shear ram component of this requirement shall be effective for any workover operations initiated on or after January 1, 2011 and not before;

2. the minimum BOP-system components when the expected surface pressure is greater than 5,000 psi shall include one annular-type well control component, two sets of pipe rams, and one set of blind-shear rams. The shear ram component of this requirement shall be effective for any workover operations initiated on or after January 1, 2011 and not before;

3. BOP auxillary equipment in accordance with the requirements of LAC 43:XIX.207.E;

4. when coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hold shall be utilized;

5. the following well-control-fluid equipment shall be installed, maintained, and utilized:

a. a fill-up line above the uppermost BOP;

b. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

c. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

E. The minimum BOP-system components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually 3/4 inch to 1 1/4 inch)

as a work string, i.e., small-tubing operations, shall include two sets of pipe rams, and one set of blind rams.

1. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

F. For coiled tubing operations with the production tree in place, you must meet the following minimum requirements for the BOP system.

1. BOP system components must be in the following order from the top down when expected surface pressures are less than or equal to 3,500 psi:

a. stripper or annular-type well control component;
b. hydraulically-operated blind rams;
c. hydraulically-operated shear rams;
d. kill line inlet;
e. hydraulically operated two-way slip rams;
f. hydraulically operated pipe rams.

2. BOP system components must be in the following order from the top down when expected surface pressures are greater than 3,500 psi:

a. stripper or annular-type well control component;
b. hydraulically-operated blind rams;
c. hydraulically-operated shear rams;
d. kill line inlet;
e. hydraulically-operated two-way slip rams;
f. hydraulically-operated pipe rams;
g. hydraulically-operated blind-shear rams. These rams should be located as close to the tree as practical.

3. BOP system components must be in the following order from the top down for wells with returns taken through an outlet on the BOP stack:

a. stripper or annular-type well control component;
b. hydraulically-operated blind rams;
c. hydraulically-operated shear rams;
d. kill line inlet;
e. hydraulically-operated two-way slip rams;
f. hydraulically-operated pipe rams;
g. a flow tee or cross;
h. hydraulically-operated pipe rams. Hydraulically-operated blind-shear rams on wells with surface pressures less than or equal to 3,500 psi. As an option, the pipe rams can be placed below the blind-shear rams. The blind-shear rams should be placed as close to the tree as practical.

4. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

5. A set of hydraulically-operated combination rams may be used for the hydraulic two-way slip rams and the hydraulically-operated pipe rams.

6. A dual check valve assembly must be attached to the coiled tubing connector at the downhole end of the coiled tubing string for all coiled tubing well-workover operations. To conduct operations without a downhole check valve, it must be approved by the District Manager.

7. A kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore.

8. The hydraulic-actuating system must provide sufficient accumulator capacity to close-open-close each component in the BOP stack. This cycle must be completed with at least 200 psi above the pre-charge pressure without assistance from a charging system.

9. All connections used in the surface BOP system from the tree to the uppermost required ram must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

10. The coiled tubing connector must be tested to a low pressure of 200 to 300 psi, followed by a high pressure test to the rated working pressure of the connector or the expected surface pressure, whichever is less. The dual check valves must be successfully pressure tested to the rated working pressure of the connector, the rated working pressure of the dual check valve, expected surface pressure, or the collapse pressure of the coiled tubing, whichever is less.

G. The minimum BOP-system components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall include the following:

1. one set of pipe rams hydraulically operated; and
2. two sets of stripper-type pipe rams hydraulically operated with spacer spool.

H. Test pressures must be recorded during BOP and coiled tubing tests on a pressure chart, or with a digital recorder, unless otherwise approved by the District Manager. The test interval for each BOP system component must be 5 minutes, except for coiled tubing operations, which must include a 10 minute high-pressure test for the coiled tubing string.

I. Wireline Operations. The operator shall comply with the following requirements during routine, as defined in Subsection A of this section, and nonroutine wireline workover operations:

1. Wireline operations shall be conducted so as to minimize leakage of well fluids. Any leakage that does occur shall be contained to prevent pollution.

2. All wireline perforating operations and all other wireline operations where communication exists between the completed hydrocarbon-bearing zone(s) and the wellbore shall use a lubricator assembly containing at least one wireline valve.

3. When the lubricator is initially installed on the well, it shall be successfully pressure tested to the expected shut-in surface pressure.

J. Following completion of the well-workover activity, all such records shall be retained by the operator for a period of two years.

K. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

L. The commissioner may grant an exception to any provisions of this section that require specific equipment upon proof of good cause. For consideration of an exception, the operator must show proof of the unavailability of properly sized equipment and demonstrate that anticipated surface pressures minimize the potential for a loss of well control during the proposed operations. All exception requests must be made in writing to the commissioner and include documentation of any available evidence supporting the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§213. Diesel Engine Safety Requirements

A. On or after January 1, 2011, each diesel engine with an air take device must be equipped to shut down the diesel engine in the event of a runaway.

1. A diesel engine that is not continuously manned, must be equipped with an automatic shutdown device.

2. A diesel engine that is continuously manned, may be equipped with either an automatic or remote manual air intake shutdown device.

3. A diesel engine does not have to be equipped with an air intake device if it meets one of the following criteria:

a. starts a larger engine;

b. powers a firewater pump;

c. powers an emergency generator;

d. powers a bop accumulator system;

e. provides air supply to divers or confined entry personnel;

f. powers temporary equipment on a nonproducing platform;

g. powers an escape capsule; or

h. powers a portable single-cylinder rig washer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

§215. Drilling Fluids

A. The inspectors and engineers of the Office of Conservation shall have access to the mud records of any drilling well, except those records which pertain to special muds and special work with respect to patentable rights, and shall be allowed to conduct any essential test or tests on the mud used in the drilling of a well. When the conditions and tests indicate a need for a change in the mud or drilling fluid program in order to insure proper control of the well, the District Manager shall require the operator or company to use due diligence in correcting any objectionable conditions.

B. Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances.

C. The well shall be continuously monitored during all operations and shall not be left unattended at any time unless the well is shut in and secured.

D. The following well-control-fluid equipment shall be installed, maintained, and utilized:

1. a fill-up line above the uppermost bop;

2. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

3. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

E.Safe Practices

1. Before starting out of the hole with drill pipe, the drilling fluid must be properly conditioned. A volume of drilling fluid equal to the annular volume must be circulated with the drill pipe just off-bottom. This practice may be omitted if documentation in the driller's report shows:

a. no indication of formation fluid influx before starting to pull the drill pipe from the hole;

b. the weight of returning drilling fluid is within 0.2 pounds per gallon of the drilling fluid entering the hole.

2. Record each time drilling fluid is circulated in the hole in the driller’s report.

3. When coming out of the hole with drill pipe, the annulus must be filled with drilling fluid before the hydrostatic pressure decreases by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled must be calculated before the hole is filled. Both sets of numbers must be posted near the driller's station. A mechanical, volumetric, or electronic device must be used to measure the drilling fluid required to fill the hole.

4. Controlled rates must be used to run and pull drill pipe and downhole tools so as not to swab or surge the well.

5. When there is an indication of swabbing or influx of formation fluids, appropriate measures must be taken to control the well. Circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom.

6. The maximum pressures must be calculated and posted near the driller's console that you may safely contain under a shut-in BOP for each casing string. The pressures posted must consider the surface pressure at which the formation at the shoe would break down, the rated working pressure of the BOP stack, and 70 percent of casing burst (or casing test as approved by the district manager). As a minimum, you must post the following two pressures:

a. the surface pressure at which the shoe would break down. This calculation must consider the current drilling fluid weight in the hole; and

b. the lesser of the BOP's rated working pressure or 70 percent of casing-burst pressure (or casing test otherwise approved by the district manager).

7. An operable drilling fluid-gas separator and degasser must be installed before you begin drilling operations. This equipment must be maintained throughout the drilling of the well.

8. The test fluids in the hole must be circulated or reverse circulated before pulling drill-stem test tools from the hole. If circulating out test fluids is not feasible, with an

appropriate kill weight fluid test fluids may be bullhead out of the drill-stem test string and tools.

9. When circulating, the drilling fluid must be tested at least once each work shift or more frequently if conditions warrant. The tests must conform to industry-accepted practices and include density, viscosity, and gel strength; hydrogen ion concentration; filtration; and any other tests the district manager requires for monitoring and maintaining drilling fluid quality, prevention of downhole equipment problems and for kick detection. The test results must be recorded in the drilling fluid report.

F. Monitoring Drilling Fluids

1. Once drilling fluid returns are established, the following drilling fluid-system monitoring equipment must be installed throughout subsequent drilling operations. This equipment must have the following indicators on the rig floor:

a. pit level indicator to determine drilling fluid-pit volume gains and losses. This indicator must include both a visual and an audible warning device;

b. volume measuring device to accurately determine drilling fluid volumes required to fill the hole on trips;

c. return indicator devices that indicate the relationship between drilling fluid-return flow rate and pump discharge rate. This indicator must include both a visual and an audible warning device; and

d. gas-detecting equipment to monitor the drilling fluid returns. The indicator may be located in the drilling fluid-logging compartment or on the rig floor. If the indicators are only in the logging compartment, you must continually man the equipment and have a means of immediate communication with the rig floor. If the indicators are on the rig floor only, an audible alarm must be installed.

G. Drilling Fluid Quantities

1. Quantities of drilling fluid and drilling fluid materials must be maintained and replenished at the drill site as necessary to ensure well control. These quantities must be determined based on known or anticipated drilling conditions, rig storage capacity, weather conditions, and estimated time for delivery.

2. The daily inventories of drilling fluid and drilling fluid materials must be recorded, including weight materials and additives in the drilling fluid report.

3. If there are not sufficient quantities of drilling fluid and drilling fluid material to maintain well control, the drilling operations must be suspended.

H. Drilling Fluid-Handling Areas

1. Drilling fluid-handling areas must be classified according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Division 1 and Division 2 or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class 1, Zone 0, Zone 1, and Zone 2. In areas where dangerous concentrations of combustible gas may accumulate. A ventilation system and gas monitors must be installed and maintained. Drilling fluid-handling areas must have the following safety equipment:

a. a ventilation system capable of replacing the air once every 5 minutes or 1.0 cubic feet of air-volume flow per minute, per square foot of area, whichever is greater. In addition:

i. if natural means provide adequate ventilation, then a mechanical ventilation system is not necessary;

ii. if a mechanical system does not run continuously, then it must activate when gas detectors indicate the presence of 1 percent or more of combustible gas by volume; and

iii. if discharges from a mechanical ventilation system may be hazardous, the drilling fluid-handling area must be maintained at a negative pressure. The negative pressure area must be protected by using at least one of the following: a pressure-sensitive alarm, open-door alarms on each access to the area, automatic door-closing devices, air locks, or other devices approved by the District Manager;

b. gas detectors and alarms except in open areas where adequate ventilation is provided by natural means. Gas detectors must be tested and recalibrated quarterly. No more than 90 days may elapse between tests;

c. explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressuring equipment, the air intake must be located outside of and as far as practicable from hazardous areas; and

d. alarms that activate when the mechanical ventilation system fails.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:

Subpart 4. Statewide Order No. 29-B-a

Chapter 11. Required Use of Storm Chokes

§1101. Scope

A. Order establishing rules and regulations concerning the required use of storm chokes to prevent blowouts or uncontrolled flow in the case of damage to surface equipment.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by the Department of Natural Resources, Office of Conservation, LR 20:1127 (October 1994), amended LR 41:

§1103. Applicability

A. All wells capable of flow with a surface pressure in excess of 100 pounds, falling within the following categories, shall be equipped with storm chokes.:

1. any locations inaccessible during periods of storm and/or floods, including spillways;

2. located in bodies of water being actively navigated;

3. located in wildlife refuges and/or game preserves;

4. located within 660 feet of railroads, ship channels, and other actively navigated bodies of water;

5. located within 660 feet of state and federal highways in Southeast Louisiana, in that area East of a North-South line drawn through New Iberia and South of an East-West line through Opelousas;

6. located within 660 feet of state and federal highways in Northeast Louisiana, in that area bounded on the West by the Ouachita River, on the North by the Arkansas-Louisiana line, on the East by the Mississippi River, and on the South by the Black and Red Rivers;

7. located within 660 feet of the following highways:

a. U.S. Highway 71 between Alexandria and Krotz Springs;

b. U.S. Highway 190 between Opelousas and Krotz Springs;

c. U.S. Highway 90 between Lake Charles and the Sabine River;

8. located within the corporate limits of any city, town, village, or other municipality.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), amended LR 41:

§1104. General Requirements for Storm Choke Use at Water Locations

A. This Section only applies to oil and gas wells at water locations.

B. A subsurface safety valve (SSSV) shall be designed, installed, used, maintained, and tested to ensure reliable operation.

1. The device shall be installed at a depth of 100 feet or more below the seafloor within two days after production is established.

2. Until a SSSV is installed, the well shall be attended in the immediate vicinity so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface-safety device has been installed in the well.

3. The well shall not be open to flow while the SSSV is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

4. All SSSV's must be inspected, installed, used, maintained, and tested in accordance with American Petroleum Institute Recommended Practice 14B, Recommended Practice for Design, Installation, Repair, and Operation of Subsurface Safety Valve Systems.

C. Temporary Removal for Routine Operations

1. Each wireline or pumpdown-retrievable SSSV may be removed, without further authorization or notice, for a routine operation which does not require the approval of Form DM-4R.

2. The well shall be identified by a sign on the wellhead stating that the SSSV has been removed. If the master valve is open, a trained person shall be in the immediate vicinity of the well to attend the well so that emergency actions may be taken, if necessary.

3. A platform well shall be monitored, but a person need not remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mud line and the master valve closed, unless otherwise approved by the district manager.

4. Each operator shall maintain records indicating the date a SSSV is removed, the reason for its removal, and the date it is reinstalled

D. Emergency Action. In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device and which is capable of natural flow shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

E. Design and Operation

1. All SSSVs must be inspected, installed, maintained, and tested in accordance with API RP 14B, Recommended Practice for Design, Installation, Repair, and Operation of Subsurface Safety Valve Systems.

2. Testing Requirements. Each SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced at intervals not exceeding 6 months for those valves not installed in a landing nipple and 12 months for those valves installed in a landing nipple.

3. Records must be retained for a period of two years for each safety device installed.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 41:

§1105. Waivers

A. Onshore Wells. Where the use of storm chokes would unduly interfere with normal operation of a well, the District Manager may, upon submission of pertinent data, in writing, waive the requirements of this order.

B. Offshore Wells

1. The district manager, upon submission of pertinent data, in writing explaining the efforts made to overcome the particular difficulties encountered, may waive the use of a subsurface safety valve under the following circumstances, and may, in his discretion, require in lieu thereof a surface safety valve:

a. where sand is produced to such an extent or in such a manner as to tend to plug the tubing or make inoperative the subsurface safety valve;

b. when the flowing pressure of the well is in excess of 100 psi but is inadequate to activate the subsurface safety valve;

c. where flow rate fluctuations or water production difficulties are so severe that the subsurface safety valve would prevent the well from producing at its allowable rate;

d. where mechanical well conditions do not permit the installation of a subsurface safety valve;

e. in such other cases as the district manager may deem necessary to grant an exception.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 1, 1961, amended March 15, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 41:

James H. Welsh
Commissioner

1501#007

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2015-16 Commercial King Mackerel Season

In accordance with the provisions of R.S. 49:953 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to employ emergency procedures to establish seasonal rules to set finfish seasons, R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for the commercial harvest of king mackerel in Louisiana state waters:

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2015 and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2016, which is the date expected to be set for the re-opening of the 2016-17 commercial king mackerel season in federal waters.

The commission also authorizes the secretary to open additional commercial king mackerel seasons in Louisiana state waters if he is informed that NMFS has opened such additional seasons and to close such seasons when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission.

Effective with seasonal closures under this rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell king mackerel, whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall possess king mackerel in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Edwin “Pat” Manuel
Chair

1501#039

Rules

RULE

Department of Culture, Recreation and Tourism
Seafood Promotion and Marketing Board

Seafood Promotion and Marketing (LAC 76:I.Chapter 5)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:578.2(B) and R.S. 56:578.3, the Louisiana Seafood Promotion and Marketing Board has amended its rules for internal governance. The revisions are made to be consistent with applicable state law, including Act No. 228 of the Regular Session 2013, to update its procedures, and the names of standing committees.

Title 76
WILDLIFE AND FISHERIES
Part I. Wildlife and Fisheries Commission and Agencies Thereunder
Chapter 5. Seafood Promotion and Marketing Board

§501. Bylaws

A. The specific location of the principal office of the Louisiana Seafood Promotion and Marketing Board as a part of the Office of the Secretary of the Department of Culture, Recreation and Tourism shall be in Baton Rouge, Louisiana as established by title 56 of the *Louisiana Revised Statutes*.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:39 (January 2015).

§503. Meetings

A. Regular Meetings. The regular meetings of the board shall be as set at any regular or special meeting by resolution adopted by a majority of the members present.

B. Special Meetings

1. Special meetings of the board may be called by the chairman, at his discretion, and shall be called by the chairman upon written request of any eight members. The notice of each special meeting shall state the purpose for which it is called, and only those matters shall be considered that have been included in the call, unless the board agrees to take up other matters by unanimous vote.

2. The chairman shall cause written notices of the time and place of special meetings to be emailed, to each member, at the addresses as they appear in the records of the board, in accordance with the open meetings law.

C. Quorum; Minutes

1. The attendance of eight members at any regular meeting shall constitute a quorum for the transaction of all business.

2. Minutes will be available to board members not later than the next regular meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:39 (January 2015).

§505. Election of Officers and Appointments

A. Officers shall be elected annually at the first regular meeting held in the third quarter of each state fiscal year, at which the members shall elect, from among their own number, a chairman, a vice-chairman, who shall also be the chairman-elect, and a secretary-treasurer to hold office for one year, or until their successors are elected. No member shall be elected as an officer until such member has served at least one year on the board.

B. …

C. No member elected chairman shall serve consecutive terms and no member may serve as chairman more than two terms. No chairman shall serve as vice-chairman in the term following his term as chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:39 (January 2015).

§507. Duties of the Chairman

A. The powers and duties of the chairman shall be:

1. to preside as chairman at al meetings of the board, with the right to vote on all motions;

2. to see that the laws of the state, pertaining to the purposes and functions, of the board, the motions of the board and its policies are faithfully observed and executed;

3. to call special meetings of the board, at his discretion, or upon the written request of eight members;

4. - 6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:39 (January 2015).

§509. Duties of the Vice-Chairman

A. Whenever the chairman is absent from any regularly scheduled meeting, his duties shall be performed by the vice-chairman. Whenever the chairman is absent from a special meeting called by him, upon his own initiative, or upon written request of eight board members, his duties shall be performed by the vice-chairman. The vice-chairman may not assume the duties of the chairman for the purpose of calling a special meeting when the chairman is temporarily absent from the state, or when the chairman is temporarily incapacitated through illness, or otherwise, unless the chairman or eight members, direct the vice-chairman to assume the office of chairman for the purpose of calling such special meeting.

B. …

AUTHORITY NOTE: Promulgated in accordance R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:39 (January 2015).

§511. Duties of Secretary-Treasurer

A. To serve as chairman of Finance Committee.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:40 (January 2015).

§513. Board Committees

A. …

B. The standing committees of the board are:

1. executive, which shall consist of the elected officers of the board;
2. finance;
3. marketing;
4. legislative; and
5. education.

C. The member appointed in accordance with R.S. 56:578.2(A)(2)(g) to serve as a marketing specialist shall chair the marketing committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:40 (January 2015).

§515. Order of Business

A. The chairman of the board, in consultation with the executive director, shall prepare and submit to the board an agenda covering the items of business to be considered and acted upon at each meeting of the board. The agenda shall be submitted to the board seven days before a regular meeting. The board may consider such matters as may properly be brought before it.

B. In accordance with R.S. 42:14(D), the board shall provide an opportunity for public comment at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. Public comment is restricted to matters included on the agenda. Public comment is limited to three minutes for each speaker on each matter unless additional time is allowed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:40 (January 2015).

§519. Amendment of Bylaws

A. Amendments to these bylaws may be adopted at any regular meeting of the board by a majority vote of the board members present at the meeting. However, no such alteration or amendment shall be considered unless:

1. notice of the intention to amend the bylaws shall have been given in writing at a previous meeting of the board; and
2. a draft of the proposed amendment shall have been sent to each member of the board at least 48 hours in advance of the meeting at which the action of such alteration or amendment is to be taken.

B. In accordance with R.S. 56:578.2, the amendments adopted by the board shall be amended or promulgated by rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:40 (January 2015).

§520. Election

A. The election of the chairman, vice-chairman, secretary-treasurer will be held at the first regular meeting held in the third quarter of each state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:40 (January 2015).

§521. Disqualification

A. The board, by a two-thirds vote of the members present, may remove a member for cause, including but not limited to abandonment of office, conviction of a felony, or a plea of nolo contendere thereto, malfeasance, or gross misconduct in office.

B. A board member may be deemed to have abandoned his office upon failure to attend any three consecutive board meetings or any three meetings in a calendar year, unless the absence was excused by the chairman in response to the member's request.

AUTHORITY NOTE: Promulgated in accordance R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:40 (January 2015).

Karen Profita
Executive Director

1501#008

RULE

Board of Elementary and Secondary Education

Bulletin 134—Tuition Donation Rebate Program
(LAC 28:CLV.103, 303, 901, and 1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 133—Scholarship Programs*: §103, Definitions; §303,

Awarding of Scholarships; §901, General Audits and Financial Reviews; and §1303, Annual Report on Program Implementation. The revisions effectuate the provisions of Act 424 of the 2014 Regular Legislative Session regarding the definition of an eligible student, portability of scholarships, audit requirements, and reporting student testing results.

Title 28
EDUCATION
Part CLV. Bulletin 134—Tuition Donation Rebate Program

Chapter 1. General Provisions

§103. Definitions

A. - A.2. …

* * *

Qualified Student—a child who is a member of a family that resides in Louisiana with a total household income that does not exceed an amount equal to 250 percent of the federal poverty level based on the federal poverty guidelines established by the federal Office of Management and Budget and is a student who:

i. is entering kindergarten for the first time;

ii. was enrolled in a public school in Louisiana on October 1 and February of the most recent school year; or

iii. received a scholarship from a school tuition organization or the Student Scholarships for Educational Excellence Program for the previous school year.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1024 (April 2013), amended LR 41:41 (January 2015).

Chapter 3. School Tuition Organizations

§303. Awarding of Scholarships

A. - B. …

C. School tuition organizations shall award scholarships to qualified students on a first-come, first-serve basis, with priority given to students who received a scholarship from the school tuition organization or the Student Scholarships for Educational Excellence Program in the previous year.

D. - F.4. …

G. Scholarships granted to qualified students shall be portable during the school year and can be used at any qualifying school served by the school tuition organization that accepts a qualified student. If the parent of a qualified student who is receiving a scholarship desires the student to move to a new qualified school served by the school tuition organization during a school year, the scholarship amount may be prorated.

H. - I.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 39:1025 (April 2013), amended LR 40:499 (March 2014), LR 41:41 (January 2015).

Chapter 9. Review of School Tuition Organizations

§901. General Audits and Financial Reviews

A. The LDE shall annually conduct an audit of a school tuition organization. The LDE shall bar a school tuition organization from participating in the rebate authorized under this Section if the school tuition organization intentionally or substantially fails to comply with the requirements of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1027 (April 2013), amended LR 41:41 (January 2015).

Chapter 13. Testing

§1303. Annual Report on Program Implementation

A. - B. …

C. The LDE shall publically report state test scores for each student receiving a scholarship the entirety of the students participating in the tuition donation rebate program in accordance with the requirements of the federal FERPA statute (20 U.S.C. 1232g) and regulations (34 CFR 99.1 et seq.). However, the LDE shall not include the name or any other identifying information for individual students

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013), amended LR 41:41 (January 2015).

Shan N. Davis
Executive Director

1501#019

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28:CXV.701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §701, Maintenance and Use of System Records and Reports. The revision is required by the 2014 Regular Session of the Louisiana Legislature. The Louisiana Department of Education is required to develop a system of unique student identification numbers for the purpose of maintaining accurate and current student information. Each local school board is required to assign the unique student identification numbers to all of the students enrolled in public elementary and secondary schools in their respective districts.

Title 28
EDUCATION
Part CVX. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 7. Records and Reports

§701. Maintenance and Use of System Records and Reports

A. - B.2. …

3. By not later than May 1, 2015, the LDE shall develop a system of unique student identification numbers. By not later than June 1, 2015, each local public school board shall assign such a number to every student enrolled in a public elementary or secondary school. Student identification numbers shall not include or be based on Social Security numbers, and a student shall retain his student identification number for his tenure in Louisiana public elementary and secondary schools.

4. Information files and reports shall be stored with limited accessibility and shall be kept reasonably safe from damage and theft.

C. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:93, R.S. 17:411, R.S. 17:415, and R.S. 17:3913

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1268 (June 2005), amended LR 37:1380, 1380 (May 2011), LR 40:764 (April 2014), LR 41:41 (January 2015).

Shan N. Davis
Executive Director

1501#020

RULE

Office of the Governor
Board of Pardons
Committee on Parole

Parole—Administration, Eligibility
and Types of Parole, Meetings and Hearings
(LAC 22:V.119 and 205 and XI.Chapters 1, 3, 5, and 8)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons, Committee on Parole has amended and promulgated its rules in LAC 22:XI.102, 117, 307, 501, 504, 507, 511, 514, and Chapter 8. This rulemaking contains technical revisions and also incorporates acts of the 2014 Regular Legislative Session. Act 52 requires that the committee notify the district attorney in the parish of conviction in advance of a scheduled parole hearing; Act 153 amends certain eligibility requirements for medical parole; Act 306 provides with respect to education, experience, and training requirements of committee members and provides with respect to majority vote in certain circumstances; Act 340 provides with respect to ameliorative penalty consideration. In addition, the Board of Pardons has amended its rules of LAC 22:V.119 and 205. These rule changes incorporate Act 6 of the 2014 Regular Legislative Session. Act 6 reduces the length of time before an individual serving a life sentence can re-apply for a clemency. In addition, the board has made technical changes to training requirements, authorizing the training curriculum to be developed by the board chairman in collaboration with the Department of Public Safety and Corrections.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part V. Board of Pardons
Chapter 1. Administration
§119. Training

A. Within 90 days of being appointed to the board, each member shall complete a comprehensive training course developed by the board chairman in collaboration with the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15.572.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2253 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:42 (January 2015).

Chapter 2. Clemency
§205. Application Filing Procedures

A. - C. ...

D. Reapplication upon Denial. Any applicant denied by the board shall be notified, in writing, of the reason(s) for the denial and thereafter may file a new application as indicated below.

1. Applicants Sentenced to Life Imprisonment. Any applicant with a life sentence may reapply five years after the initial denial; and every five years thereafter. Applicant must also meet the criteria stated in §203.C.2.a-d.

2. - 4. ...

5. Denial/No Action Taken by Governor after Favorable Recommendation. The board shall notify an applicant after its receipt of notification from the governor that the board's favorable recommendation was denied or no action was taken. The applicant may submit a new application within one year from the date on the board's notification to the applicant of governor's denial or no action.

E. Notice of Action Taken on Application. After review of application for clemency by the board, applicants shall be notified, in writing, of action taken by the board. Action can include granting a hearing before the board or denial of a hearing. If the applicant does not re-apply within the one year period, the application filing procedures in A-D.3 of this Section, shall apply

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2255 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:42 (January 2015).

Part XI. Committee on Parole
Chapter 1. Administration
§102. Powers and Duties of the Committee

A. The Louisiana Committee on Parole shall:

1. make parole release and revocation decisions under R.S. 15:574.2;

2. evaluate any application filed pursuant to R.S. 15:308 and taking into consideration the risk of danger the applicant would pose to society if released from confinement, shall make recommendations to the Board of Pardons as to whether the applicant is eligible for a reduction in sentence pursuant to R.S. 15:308;

3. adopt rules not inconsistent with law as the committee deems necessary and proper with respect to the eligibility of offenders for parole and the conditions imposed upon offenders who are released on parole;

4. keep records of its official actions and make them accessible according to law;

5. collect, develop, and maintain statistical information concerning its services and decisions;

a. notify the district attorney of the parish where the conviction occurred; the notification shall be in writing and shall be issued at least 30 days prior to the hearing date. The district attorney of the parish where the conviction occurred shall be allowed to review the record of the offender since incarceration, including but not limited to any educational or vocational training, rehabilitative program participation,

disciplinary conduct and risk assessment score. The district attorney shall be allowed to present testimony to the committee and submit information relevant to the proceedings;

6. when requested to do so, submit written notification of the offender's pending release, at least seven days prior to the offender's date of release, to the chief of police, sheriff, or district attorney of the parish where the offender will reside and where the conviction(s) occurred;

7. submit an annual report on the committee's performance to the Secretary of the Department of Public Safety and Corrections on or before February 1 each year for the previous calendar year, to include statistical and other data with respect to the determination and work of the committee, relevant data of committee decisions, a summary of past practices and outcomes, plans for the upcoming year, research studies which the committee may make of sentencing, parole, or related functions, and may include recommendations for changes considered necessary to improve its effectiveness.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2258 (August 2013), amended LR 41:42 (January 2015).

§103. Composition of the Committee

A.1. - C. ...

D. All members, except the ex-officio member, appointed after August 1, 2014 shall possess not less than a bachelor's degree from an accredited college or university, and shall possess not less than five years actual experience in the field of corrections, law enforcement, sociology, law, education, social work, medicine, psychology, psychiatry, or a combination thereof. If a member does not have a bachelor's degree from an accredited college or university, he shall have no less than seven years experience in a field listed in this Subsection. The provisions of this Subsection shall not apply to any person serving as a member of the board on August 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended by Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2259 (August 2013), LR 41:43 (January 2015).

§117. Training

A. Within 90 days of being appointed to the committee, each member shall complete a comprehensive training course developed by the board chairman in collaboration with the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2261 (August 2013), LR 41:43 (January 2015).

Chapter 3. Parole—Eligibility and Types

§307. Medical Parole

A. An offender determined by the secretary of the Department of Public Safety and Corrections to be permanently disabled or terminally ill may be eligible for parole release consideration.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical parole consideration.

2. Offenders who are serving a sentence for first degree murder, second degree murder, or who are awaiting execution are not eligible for medical parole consideration.

B. *Permanently Disabled Offender*—any offender who is unable to engage in any substantial gainful activity by reason of any medically determinable physical impairment which can be expected to result in death or which is or can be expected to be permanently irreversible.

C. *Terminally Ill Offender*—any offender who, because of an existing medical condition, is irreversibly terminally ill. For the purposes of this section, "terminally ill" is defined as having a life expectancy of less than one year due to an underlying medical condition.

D. Public hearings for medical parole consideration will be held at a location convenient to the committee and the offender. The committee may request that additional medical information be provided or that further medical examinations be conducted. The committee shall determine the risk to public safety and shall grant parole only after determining that the offender does not pose a threat to public safety. In the assessment of risk, emphasis shall be given to the offender's medical condition and how this relates to his overall risk to society.

E. The authority to grant medical parole shall rest solely with the committee.

1. The committee shall not grant medical parole unless advised by the secretary of the Department of Public Safety and Corrections or the secretary's designated healthcare authority that the offender is permanently disabled or terminally ill.

2. The committee, if it grants medical parole, may establish any additional conditions of medical parole as it may deem necessary to monitor the offender's physical condition and to assure that the offender is not a danger to himself and society.

F. Supervision of an offender released on medical parole shall consist of periodic medical evaluations at intervals to be determined by the committee at the time of release.

1. An offender released on medical parole may have his parole revoked if his medical condition improves to such a degree that he is no longer eligible for medical parole.

2. Medical parole may also be revoked for violation of any condition of parole as established by the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013), LR 41:43 (January 2015).

Chapter 5. Meetings and Hearings of the Committee on Parole

§501. Types of Meetings

A. All meetings and hearings of the committee shall be open to the public, in accordance with the provisions of R.S. 42:1 et seq., (public policy for open meetings) and *Robert's Rules of Order*. For the purpose of convenience and in order to differentiate between the different types of forums for conducting business, the following designation or title has been given, depending upon the nature of the matters or actions to be considered.

1. A *business meeting* is a meeting of the full committee to discuss all general business matters as set forth in §507.

2. A *public hearing* is a meeting of randomly selected, three-member panels, as set forth in §511.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2262 (August 2013), LR 41:44 (January 2015).

§503. Parole Panels

A - C. ...

D. A member may request a change in the composition of a panel to which that member has been assigned. However, such requests shall be carefully considered and shall generally only be made in the case of illness or emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2262 (August 2013), LR 41:44 (January 2015).

§504. General Procedures

A. Minutes. The committee's minutes of public hearings shall include the following information as applicable:

1. name and Department of Corrections (DOC) number of the offender;

2. name of counsel representing the offender (an offender docketed for a public hearing may be represented by counsel);

3. the vote of each member; and

4. the decision of the committee.

B. Votes

1. The vote of each panel member shall be recorded by name and date on the vote sheet.

2. Only those members present shall vote; voting by proxy is prohibited.

3. No vote shall be taken while the panel is in executive session.

4. The panel shall not rescind the original vote without conducting a new hearing, except as provided in §505.L, §513.A.1-3, and §711.

5. The original vote sheet shall remain in the inmate's DOC file and a copy shall be attached to the minutes and maintained in a separate locked file in the committee office.

C. Accuracy of Vote. The chairperson of the panel shall ensure that support staff reviews case records subsequent to voting to assure the accuracy of all documents.

D. Continuance/Recess. A majority vote is required to continue or recess a meeting or hearing. Generally, the matter will be rescheduled for the next month, but may be rescheduled for an earlier date if deemed appropriate by the panel (see §514, Voting/Votes Required).

E. Executive Session. A panel may go into executive session to discuss each offender's case prior to a decision pursuant to the provisions of R.S. 42:6, 42:6.1 and 15:574.12. No vote shall be taken while the panel is in executive session.

F. Observance of Proceedings. The committee may extend invitations to individuals to observe committee proceedings.

G. Testimony. The committee may direct questions to and/or request statements from anyone appearing before the committee.

H. Children Under 12. It is generally inappropriate for children under the age of 12 years, except when the child is a victim and chooses to appear, to be present during any public meeting or hearing of the committee.

I. Space and Security. The number of people supporting or opposing the granting of parole, including victims and/or family members of victims will be limited only by space and security considerations.

J. Meeting/Hearing Schedule. The chairman shall be responsible for schedules of business meetings and public hearings.

1. Such schedules may be changed, only upon prior notice, provided that such changes are made in a timely manner in order to notify all concerned.

2. Such meetings may be rescheduled without notice due to inclement weather, or any other emergency or unforeseen situation.

K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:44 (January 2015).

§505. Duty Officer

A. The chairman of the committee or his or her designee shall develop a duty calendar and shall designate one committee member as the daily duty officer.

1. The duty officer shall be available and present to act on behalf of the committee concerning both routine office and administrative matters as authorized by these rules.

2. If the duty officer must substitute for another member at a hearing or is absent for any other reason, he or she need not be replaced by another duty officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:44 (January 2015).

§507. Business Meetings

A. - B.4. ...

C. Business meetings should be audio recorded and copies of the audio recording and/or written minutes shall be available upon request.

D. At business meetings, detailed minutes indicating time of commencement, persons present (including visitors and witnesses), adoption of previous minutes, motions and seconds, and time of adjournment shall be recorded and maintained by the committee staff member so designated by the chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013) amended LR 41:45 (January 2015).

§511. Panel Action

A. The chairman shall schedule public hearings. A copy of the schedule shall be available for public inspection at the committee office.

B.1. - B.2.c. ...

d. to evaluate and consider any application filed pursuant to R.S. 15:308 in accordance with rules promulgated by the Department of Public Safety and Corrections and Chapter 8, "Ameliorative Penalty Consideration."

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and RS. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:57 (January 2014), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015).

§514. Voting/Votes Required

A. - A.4. ...

B. Majority Vote

1. The committee may grant parole with two votes of a three-member panel, or, if the number exceeds a three-member panel, a majority vote of those present if all of the following conditions are met.

a. The offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

b. The offender has not committed any major disciplinary (schedule B) offenses in the 12 consecutive months prior to the parole hearing date. If the offender's period of incarceration is less than 12 months, the offender must not have committed any disciplinary offenses during his/her entire period of incarceration.

c. The offender has completed the mandatory minimum of 100 hours of pre-release programming in accordance with R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

d. The offender has completed substance abuse treatment as applicable, if such programming is available at the facility where the offender is incarcerated.

e. The offender has obtained a HSE credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a HSE credential due to a learning disability. If the offender is deemed incapable of obtaining a HSE credential, the offender must complete at least one of the following:

i. a literacy program;

ii. an adult basic education program; or

iii. a job skills training program.

f. The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

2. A majority vote is required to revoke parole.

3. A majority vote is required to continue or recess a meeting or hearing.

4. A majority vote is required to grant an offender's request for a rehearing.

5. A majority vote is required for executive session.

6. A majority vote is required to recommend to the Board of Pardons as to whether an applicant is eligible for a reduction in sentence pursuant to R.S. 15:308 and Chapter 8, "Ameliorative Penalty Consideration."

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2264 (August 2013), amended LR 41:45 (January 2015).

Chapter 8. Ameliorative Penalty Consideration

§801. Application

A. An offender may apply for ameliorative penalty consideration in as provided by R.S. 15:308(C) relative to ameliorative penalty provisions, in accordance with rules promulgated by the Department of Public Safety and Corrections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015).

§803. Committee Evaluation

A. After a determination that an offender qualifies for consideration under R.S. 15:308(C) and rules set by the department, the Department of Public Safety and Corrections shall forward all such applications to the Committee on Parole. The case shall be set for administrative review by a parole panel.

B. The panel shall evaluate the record of any offender whose application is submitted by the department, taking into consideration the risk of danger the applicant would pose to society if released from confinement. Such evaluation may be conducted by record review, telephone or video conference, or other meeting technology at the discretion of the panel.

C. The criteria for such evaluation includes, but is not limited to the guidelines listed in Chapter 7, §701.C.1, 2, 4, and D.8. In addition, an offender shall be considered inappropriate for recommendation to the Board of Pardons for ameliorative penalty consideration for one or any combination of the following:

1. poor conduct and/or disciplinary record, including habitual and compulsive violent behavior, consistent signs of bad work habits, lack of cooperation or good faith effort and/or other undesirable behavior;

2. maximum custody status, except those offenders assigned to maximum custody based solely upon classification criteria other than disciplinary reasons;

3. low level of program activity and/or completion when compared to program opportunity and availability;

4. extensive habitual and or violent criminal history;

5. extensive supervision revocation history.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015).

§805. Parole Panel Decision/Recommendation

A. All members of the panel will vote individually to grant or deny (with or without instructions) the offender's application. Any recommendation of the panel shall not be binding on the board.

1. If the offender's application is granted, the application and packet shall be forwarded to the Board of Pardons with a recommendation for reduction in sentence pursuant to R.S. 15:308.

B. The panel may also recommend new, additional, and/or require completion of programming, within the department, such as substance abuse treatment, educational or vocational training, etc.

C. The committee shall notify each offender in writing of the panel's decision in his/her case with instructions, if applicable. A copy of all decisions shall be disseminated to the warden of the facility where the offender is housed, the offender's master prison record, and the offender's case record.

D. In the event the offender is instructed to re-apply to the Committee on Parole, re-application frequency shall be a minimum of 12 months.

E. The decision of the parole panel is final and shall not be appealed through the administrative remedy procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:46 (January 2015).

§807. Victim Notification

A. The committee shall ensure victims registered with the Crime Victims Services Bureau of the department receive written notification of the date and time an offender is docketed for review by a parole panel. Such notice shall be made no less than 30 days prior to the scheduled docket date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:46 (January 2015).

Sheryl M. Ranatza
Board Chair

1501#004

RULE

Office of the Governor
Division of Administration
Office of Technology Services

Office of Technology Services Consolidation
(LAC 4:XV.101, 301, 303, 501, 503, and 701)

The Office of Technology Services, Division of Administration has repealed LAC, Title 4 Part XV Information Technology, Chapter 3, Section 303; and has amended Chapter 1, Section 101; Chapter 3, Section 301; Chapter 5, Sections 501 and 503; and Chapter 7, Section 701.

Act 712 of the 2014 Regular Legislative Session created a consolidated Office of Technology Services (OTS) headed by the state chief information officer and granted the new office sole authority in establishing, defining, and coordinating all IT systems and services affecting the management and operations of the in-scope executive cabinet agencies of state government. The transfer of functions, positions, assets, and funds between and within departments to form OTS and its ancillary responsibilities to charge user agencies for all or part of the cost of its operation have also been authorized. In addition, OTS will have the sole responsibility for the procurement of IT systems and services for in-scope agencies. Act 712 became effective July 1, 2014.

The fiscal impact in FY 2015 of the IT consolidation is projected to be a net savings in state general fund of $24,700,000. Savings will be realized through leveraging economies of scale in consolidated procurements, improved resource utilization, maximizing shared services, and efficiency gains in provision of IT support services.

Title 4
ADMINISTRATION
Part XV. Information Technology

Chapter 1. General Provisions

§101. General

A. Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 39:15.1-6 in Act 712 of the 2014 Regular Legislative Session, the position of the state chief information officer (CIO) and the Office of Technology Services were established to manage and direct the following information technology initiatives:

1. establishing and coordinating all information technology systems and information technology services affecting the management and operations of the executive branch of state government;

2. overseeing and implementing a state master information technology plan on an annual basis;

3. establishing and directing the implementation of information technology standards, architecture, and guidelines;

4. reviewing, coordinating, and standardizing information technology;

5. implementing strategic information technology planning;

6. assessing the performance of information technology systems and technology operations and personnel;

7. overseeing and coordinating the centralization of the technology systems and data processing systems;

8. overseeing all telecommunication systems;

9. assuring compatibility and connectivity of Louisiana's information systems;

10. facilitating and fostering innovative applications of emerging technologies;

11. reviewing and overseeing information technology projects and systems for compliance with statewide strategies, policies, and standards;

12. providing support and technical assistance to the Office of State Procurement, the Office of Facility Planning and Control, and the Office of Planning and Budget;

13. overseeing and coordinating access to state information that is electronically available online from agency websites;

14. facilitating a process among state agencies to identify services that are favorable for electronic delivery;

15. providing direction to the Louisiana Geographic Information Systems Council and the Louisiana Geographic Information Center (LAGIC) for coordination of geographic data, geographic technology, and geographic standards of the state;

16. identifying information technology applications that should be statewide in scope;

17. reviewing and approving the receipt by executive agencies of information technology goods and services and telecommunication systems and services from non-appropriated sources, including but not limited to grants, donations, and gifts;

18. preparing annual reports and plans concerning the status and result of the state's specific information technology plans;

19. facilitating and fostering the identification of the policy and planning data needs of the state;

20. charging respective user agencies for the cost of information technology systems and information technology services provided by the office of technology services and may include all or part of the cost of the operation of the office;

21. acting as the sole centralized customer for the acquisition, billing, and record keeping of information technology systems or information technology services provided to state agencies;

22. developing coordinated information technology systems or information technology services within and among all state agencies and require, where appropriate, cooperative utilization of information technology; and

23. reviewing, coordinating, approving, or disapproving requests by state agencies for the procurement of information technology systems or information technology services including information technology proposals, studies, and contracts.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1954 (September 2002), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:46 (January 2015).

Chapter 3. State Agencies Responsibilities

§301. General

A. All agencies under the authority of Act 712 must comply with the policies and guidelines promulgated by the Office of Technology Services.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:47 (January 2015).

§303. Information Technology Coordination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002), repealed by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:47 (January 2015).

Chapter 5. Policy and Guidelines

§501. General

A. It is the intent of the Office of Technology Services to develop formal IT policies, standards and guidelines relative to information technology activities including but not limited to the following:

1. implementing IT standards for hardware, software, and consolidation of services;

2. directing and managing IT planning, procurement, and budgeting;

3. directing and managing centralization/consolidation of technology systems and services and provision of shared IT resources;

4. assuring compatibility and connectivity of Louisiana's information systems;

5. directing and managing IT projects and systems for compliance with statewide strategies, goals, and standards.

B. The policies, standards and guidelines of the Office of Technology Services will be promulgated via the OTS website at http://doa.louisiana.gov/.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:47 (January 2015).

§503. Policy Distribution

A. The official method of publishing/distributing OTS policies, standards and guidelines will be via the OTS website at: http://doa.louisiana.gov.

B. Other electronic delivery systems will be utilized as appropriate to notify agencies of adopted policies and guidelines.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002, amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:48 (January 2015).

Chapter 7. Submitting and Receiving Electronic Bids for Public Works Contracts and for the Purchase of Materials and Supplies by Political Subdivisions

§701. General Provisions

A. Electronic bid is to be an alternative, rather than exclusive, method to a paper bid.

B. In addition to including the information required for paper bidding, when accepting bids electronically, the advertisement must:

1. specify any special condition or requirement for the submission;

2. contain the electronic address of the public entity.

C. Online service provider minimum requirements:

1. compliance with applicable law and rules:

a. Public Works contract law, R.S. 38:2212;

b. materials and supplies contract law, R.S. 38:2212.1;

c. the Louisiana Uniform Electronic Transaction Act, R.S. 9:2601-2619, particularly R.S. 9:2619(A) which provides that the commissioner of administration shall encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this state, other states, federal government, and nongovernmental persons interacting with governmental agencies of this state [R.S. 9:2619(A)] while recognizing that, if appropriate, standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing most appropriate standard for particular application. [R.S. 9:2619(B)];

d. *Louisiana Administrative Code*, Title 4, Part XV, Chapter 7, Implementation of Electronic Signatures in Global and National Commerce Act—P.L. 106-229;

e. security standards promulgated by the Office of Technology Services of the state's Division of Administration;

2. be accessible over the internet via a modem or a network connection;

3. be available daily, 7 days a week, 24 hours daily, except for maintenance, and be reliable with better than 99.95 percent uptime with backup;

4. provide two-way service—publishes on the internet public works bid-related information from the political subdivision to the contracting community, and allows online, secure public works bid submission from the contracting community to the political subdivision;

5. automatically send bid receipt to bidder whenever a bid is submitted to the provider, with the receipt digitally signed by the provider and using the same technology used by the bidder to sign the bid;

6. have accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying;

7. ensure that bid cannot be read by anyone until the public bid opening. When bid is submitted to the provider, bid must be encrypted before sending using the political subdivision's key. Encryption level must ensure security;

8. ensure that if a bidder requests that an electronic bid be withdrawn before the bid deadline, it will not be passed on, or be accessible, to the political subdivision;

9. ensure that only the last electronic bid submission from a person is kept and passed on, or made accessible, to the political subdivision;

10. ensure that bid is not passed on, or accessible, to political subdivision until the public bid opening;

11. enable electronic bid bond submission and verification with at least two participating surety agencies;

12. ensure secure digital signature;

13. uses public/private key pair technology for encrypting and digitally signing documents;

14. provide telephone support desk, at a minimum, from 8 a.m. to 7 p.m., Monday through Friday, except for legal holidays. Provides voice mail after business hours with messages being addressed the next business day. Email and fax support addresses are available 24 hours a day and be answered the next business day.

AUTHORITY NOTE: Promulgated in accordance with Act 831 of the 2003 Regular Session of the Louisiana Legislature and Act 203 of the 2006 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 32:2052 (November 2006), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:48 (January 2015).

Richard Howze
State Chief Information Officer

1501#006

RULE

Office of the Governor
Public Defender Board

Performance Standards for Criminal Defense Representation in Indigent Capital Cases (LAC 22:XV.Chapter 19)

The Public Defender Board, a state agency within the Office of the Governor, has adopted LAC 22:XV.Chapter 19, as authorized by R.S. 15:148. These rules are promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of these rules is to establish policies and procedures to ensure that public defenders, assistant public defenders, and assigned counsel perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants.

R.S. 15:148 directs the Louisiana Public Defender Board to adopt rules to create mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and create separate

performance standards and guidelines for attorney performance in capital case representation, juvenile delinquency, appellate, and any other subspecialties of criminal defense practice as well as children in need of care cases determined to be feasible, practicable, and appropriate by the board. In compliance with the directives of R.S. 15:148, the Public Defender Board has adopted these performance standards for attorneys representing indigent capital defendants.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XV. Public Defender Board
Chapter 19. Performance Standards for Criminal Defense Representation in Indigent Capital Cases

§1901. Purpose, Findings and Intentions

A. The standards for attorneys representing indigent defendants in capital cases are intended to serve several purposes. First and foremost, the standards are intended to encourage public defenders, assistant public defenders, and assigned counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants. These standards apply to trial level, appellate, and post-conviction representation. It is the intention of these rules to adopt and apply the standards for capital defense set out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated commentary, and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*.

B. The standards are also intended to alert defense counsel to courses of action that are necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that should be taken in each case to ensure that the capital client receives high quality legal representation. The standards are further intended to provide a measure by which the performance of individual attorneys and defender offices may be evaluated by case supervisors, responsible agencies and the state public defender and to assist in training and supervising attorneys. While the great majority of the requirements detailed in these standards reflect accepted minimum levels of practice in capital defense, some standards have been added to assist in the supervision, development and accountability of indigent capital defense service provision.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate". In those instances where a particular action is required in providing quality representation, the standards use the words "should" or "shall". Even where the standards use the words "should" or "shall", in certain situations the lawyers best informed professional judgment and discretion may indicate otherwise.

D. There is a limitless variety of circumstances presented by indigent capital defense and this variation in combination with changes in law and procedure requires that attorneys approach each new case with a fresh outlook. Therefore, though the standards are intended to be comprehensive, they are not exhaustive. Depending upon the type of case and the particular jurisdiction, there may well be additional actions that an attorney should take or should consider taking in order to provide zealous and effective representation. Attorneys are expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from these standards, the attorney should be aware of and be able to articulate the reasons that a departure from the standards is in the client's best interests and consistent with high quality legal representation.

E. Minimum standards that have been promulgated concerning representation of defendants in non-capital cases, and the level of adherence to such standards required for non-capital cases are not sufficient for death penalty cases. Counsel in death penalty cases are required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has adequate time and resources for preparation. These performance standards have been adapted from the *State of Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court*, adding capital specific issues and procedures where necessary. In light of the recognition that "death is different" and capital prosecutions necessitate heightened procedural safeguards, these standards should be interpreted in order to compel high quality legal representation.

F. In accordance with R.S. 15:173 the exercise of the authority to promulgate standards is not intended to create any new right, right of action, or cause of action or eliminate any right, right of action, or cause of action existing under current law. Accordingly, these standards shall not be construed to provide any criminal defendant the basis of any claim that the attorney or attorneys appointed to represent him pursuant to the Louisiana Public Defender Act of 2007 performed in an ineffective manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:49 (January 2015).

§1903. General Standards for Capital Defense Counsel

A. Obligations of Defense Counsel

1. Since the death penalty differs from all other criminal penalties, defense counsel in a capital case should respond to this difference by making extraordinary efforts on behalf of the accused.

2. The minimum standard in a capital case is high quality representation. To provide high quality representation counsel should zealously preserve, protect, and promote the client's rights and interests, and be loyal to the client. Counsel should serve as the client's counselor and advocate with courage and devotion, free from conflicts of interest and political or judicial interference. Zealous, high quality representation is to be provided in accordance with the *Louisiana Rules of Professional Conduct*.

3. To ensure the preservation, protection and promotion of the client's right and interests, counsel should:

a. be proficient in the applicable substantive and procedural law;

b. acquire and maintain appropriate experience, skills and training;

c. devote adequate time and resources to the case;

d. engage in the preparation necessary for high quality representation;

e. endeavor to establish and maintain a relationship of trust and open communication with the client;

f. make accommodations where necessary due to a client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, cultural differences, and circumstances of incarceration.

4. The primary and most fundamental obligation of a capital defense attorney to the administration of justice and as an officer of the court is to provide zealous, effective, high quality, ethical representation for his or her clients at all stages of the criminal process.

5. If personal matters make it impossible for defense counsel to fulfill the duty of zealous, high quality representation, he or she has a duty to refrain from representing the client.

6. Where counsel is unable to provide high quality representation in a particular case, counsel must promptly bring this deficiency to the attention of the capital case supervisor and the capital case coordinator or Responsible Agency. If the deficiency cannot be remedied, then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

7. Counsel assigned in any case in which the death penalty is a possible punishment should, even if the prosecutor has not indicated that the death penalty will be sought, begin preparation for the case as one in which the death penalty will be sought while employing strategies to have the case designated as a non-capital one. Even if the case has not been filed as a capital case, if there exists a reasonable possibility to believe that the case could be amended to a capital charge, counsel should be guided by capital defense techniques and these standards. In considering whether there is any reason to believe that the case could be amended, counsel should have regard to the nature of the allegations, the practice of the local prosecuting agency, statements by law enforcement and prosecutors, media and public sentiment, and any political factors that may impact the charging decision.

B. Training and Experience of Capital Defense Counsel

1. In order to provide high quality legal representation, counsel should have a mastery of any substantive criminal law and laws of criminal procedure that may be relevant to counsel's representation. Counsel should also be familiar with the prevailing customs or practices of the relevant court, and the policies and practices of the prosecuting agency.

2. In providing representation at any stage in a capital case, counsel should be familiar with all applicable areas of law relevant to capital trials, appeals, and state and federal post-conviction relief.

3. Prior to agreeing to undertake representation in a capital case, counsel should have sufficient experience or training to provide high quality representation. Counsel should not accept a capital case assignment unless he or she has been certified for the specific level of representation assigned, and has the necessary knowledge and skills to handle the particular case.

4. If after being assigned a case counsel finds that the case involves particular issues or procedures in which counsel does not have the experience or training necessary to provide high quality legal representation, counsel should acquire the necessary knowledge or skills or request resources for another attorney to provide such services.

5. In providing high quality representation, counsel should consult with and take advantage of the skills and experience of other members of the criminal defense community and certified capital defenders, in particular. Further, where considerations of timing, resources or the interests of the client make it appropriate, counsel should request assignment of an additional attorney(s). Similarly, where appropriate, counsel should request assignment of an additional attorney(s) with specialized experience or knowledge to assist directly in particular aspects of the representation.

6. Capital defense counsel should complete a comprehensive training program in the defense of capital cases as required by the capital guidelines. Counsel should, on an ongoing basis, attend and successfully complete specialized training programs in the defense of capital cases. In addition to specific training, counsel should stay abreast of changes and developments in the law and other matters relevant to the defense of capital cases.

7. As a component of acquiring and maintaining adequate training, counsel should consult with other attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information about practices of judges, prosecutors, and other court personnel. More experienced counsel should offer to mentor less experienced attorneys.

C. Resources and Caseload

1. Counsel should not accept a capital case assignment unless he or she has available sufficient resources to offer high quality legal representation to the client in the particular matter, including adequate funding, investigative services, mitigation services, support staff, office space, equipment, and research tools.

2. If after being assigned a case counsel discovers that he or she does not have available sufficient resources, then counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should seek necessary resources from all available sources, including litigating for those resources or for appropriate relief should the resources not be made available. Counsel should document in the file the resources he or she believes are needed and any attempts to obtain those resources. Counsel should create an adequate record in court to allow a full review of the denial of necessary resources or the failure to provide appropriate relief.

3. Counsel should maintain compliance with all applicable caseload and workload standards. When counsel's workload is such that counsel is unable to provide each client with high quality legal representation in accordance with the capital guidelines and these performance standards, counsel shall inform the case supervisor. If counsel believes the case supervisor has inadequately resolved the issue, counsel should raise the question progressively with the

district and the state public defender, as appropriate. Where counsel has exhausted all avenues for reasonable resolution and the excessive workload issue has not been resolved counsel should, after providing the state public defender with reasonable notice, move to withdraw from the case or cases in which capital defense services in compliance with the guidelines and these performance standards cannot be provided.

4. Counsel should never give preference to retained clients over indigent clients, or suggest that retained clients should or would receive preference.

5. Counsel representing capital clients should, due to the nature of capital cases and the necessity for time-consuming research and preparation, give priority to death penalty cases over their other caseload.

D. Professionalism

1. Counsel has an obligation to keep and maintain a thorough, organized, and current file relating to the representation of each client. Counsel's file relating to a representation includes both paper and electronic documents as well as physical objects, electronic data and audio-visual materials. Counsel's file should be maintained in a fashion that will allow counsel to provide high quality representation to the client and allow successor counsel to clearly and accurately identify the work performed, the tactical decisions made, the materials obtained, the source from which materials and information were obtained, and the work product generated in the representation. Counsel should clearly document work performed, including analysis of file materials, in such a way that other team members and successor counsel may take advantage of the work performed and avoid unnecessary duplication of effort.

2. Counsel should act with reasonable diligence and promptness in representing the client. Counsel should be prompt for all court appearances and appointments and, in the submission of all motions, briefs, and other papers. Counsel should ensure that all court filings are proofread and edited to protect the client's rights from being forfeited due to error. Counsel should be present, alert, and focused on the client's best interests during all critical stages of the proceedings.

3. Counsel's obligation to provide high quality representation to the client continues until counsel formally withdraws, or an order relieving counsel becomes final. Unless required to do so by law or the rules of professional conduct, counsel should not withdraw from a case until successor counsel has enrolled. Counsel who withdraws or is relieved should take all steps necessary to ensure that the client's rights and interests are adequately protected during any transfer of responsibility in the case. Such steps should include ensuring compliance with any filing or other deadlines in the case, and ensuring the collection or preservation of any evidence that may cease to be available if investigation were delayed.

4. All persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client, and should cooperate fully with successor counsel. This duty includes, but is not limited to:

a. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the representation and any litigation;

b. promptly providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

c. sharing potential further areas of investigation and litigation with successor counsel; and

d. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

5. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should take all steps necessary to ensure the client's rights and interests are fully protected during any transfer or reallocation of responsibility in the case. Counsel should seek to interview all persons who are or have been members of the defense team with an aim to:

a. promptly obtaining the client's files or a copy of the files, as well as information regarding all aspects of the representation;

b. discovering potential further areas of investigation and litigation; and

c. facilitating cooperation from current and former defense team members in order to coordinate professionally appropriate legal strategies.

6. Current and former counsel should maintain the confidences of the client and assert all available privileges to protect the confidentiality of work product and communications with the client. Where disclosure of privileged or confidential information is strictly necessary in carrying out the representation, such disclosures should be limited to those necessary to advance the interests of the client and should be made in circumstances that limit the extent of any waiver of privilege or confidentiality.

7. Where appropriate counsel may share information with counsel for a co-defendant, and work together with counsel for a co-defendant on investigatory, preparatory and/or strategic matters, but counsel's decisions should always reflect the needs of counsel's client with special consideration for client confidentiality. Counsel should never abdicate the client's defense to a co-defendant's counsel. Counsel should maintain full control of all decisions affecting the client. Counsel should consider whether it is appropriate to enter a formal joint defense agreement with one or more co-defendants.

8. Counsel and defense team members should provide full and honest cooperation with successor counsel undertaking the investigation and preparation of a claim of ineffective assistance of counsel. In providing honest cooperation, counsel should be alert to and avoid any improper influence arising from a desire to assist the client or to protect him or herself.

9. Where counsel is the subject of a claim of ineffective assistance of counsel, he or she should not disclose any confidential or privileged information without the client's consent, unless and until a court formally determines that privilege has been waived and then only to the extent of any such waiver. The disclosure of confidential or privileged information in such circumstances should be limited to those matters necessary to respond to specific allegations by the client concerning the lawyer's representation of the client. Nothing in this Standard shall diminish the responsibility of counsel to cooperate fully with the client and successor counsel, nor limit the ability of counsel to communicate confidential or privileged

information to the client or his legal representativeness within the protection of the lawyer-client relationship.

10. While ensuring compliance with the *Louisiana Rules of Professional Conduct* in relation to extrajudicial statements, counsel should consider the potential benefits and harm of any publicity in deciding whether or not to make a public statement and the content of any such statement. When making written or oral statements in judicial proceedings, counsel should consider the potential benefits and harm likely to arise from the public dissemination of those statements. In responding to adverse publicity, counsel should consider the interests of the client and whether a statement is required to protect the client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

11. At each stage and subject to the circumstances of each case, counsel should be mindful of the desirability of treating any victim or other person affected by the crime alleged against the client with respect, dignity, and compassion. Counsel should avoid disparaging the victim directly or indirectly, unless necessary and appropriate in the circumstances of the particular case. Counsel should undertake victim outreach through an appropriately qualified team member, or the use of an expert in defense initiated victim outreach.

E. Conflicts of Interest

1. Counsel should be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Conflicts of interest experienced by one counsel are relevant to all counsel: the existence of a conflict free lawyer on the defense team does not ameliorate the potential harm caused by a conflict affecting another lawyer on the team. Counsel should have a procedure for identifying conflicts when receiving new assignments and reviewing existing cases for conflicts where there is a relevant change in circumstances. At a minimum, counsel should maintain a conflict index containing the names of current and former clients which should be checked against the name of the client and, where known, the name of the victim(s), the name of any co-defendant(s), and the names of any important witnesses.

2. Where a capital case involves multiple defendants, a conflict will be presumed between the defendants and separate representation will be required. However, there are many other situations in which conflicts can arise. In addition to the current or prior representation of co-defendants or witnesses, conflicts can arise, for example, when a capital defense lawyer: is subject to investigation or criminal prosecution by state or federal authorities; is representing or has represented a witness or victim; is seeking employment with prosecuting agencies; has a financial, political or personal interest in the proceedings; has an excessive workload; or, is related to a victim or the judge. Disclosure of potential conflicts should be made under any of these circumstances and counsel should err in favor of disclosure of any other potential conflicts.

3. Conflicts of interest should be promptly resolved in a manner that advances the interests of the client and complies with the *Louisiana Rules of Professional Conduct*.

4. If a conflict develops during the course of representation, counsel has a duty to notify the client and, where required, the court in accordance with the rules of the court and the *Louisiana Rules of Professional Conduct*. Defense counsel should fully disclose to the client, at the earliest feasible opportunity, any interest in or connection with the case or any other matter that might be relevant to counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

5. Where the client files a motion, complaint, or grievance against counsel in regard to the quality of his or her representation, counsel should notify the Case Supervisor and the agency responsible for the assignment of counsel to the case.

6. Any waiver of conflict that is obtained should comply with the requirements of the *Louisiana Rules of Professional Conduct*, and should be obtained only after the client has been told: that a conflict of interest exists; the consequences to his defense from continuing with conflict-laden counsel; and that he has a right to obtain other counsel. In a capital case, any waiver of conflict should be obtained through and after consultation by the client with independent counsel. In order to allow the monitoring of the procedure of obtaining of a waiver, the capital case coordinator should be advised prior to obtaining a conflict waiver from an indigent capital defendant and should approve or provide for the assignment of independent counsel.

F. Allocation of Authority between Counsel and Client

1. The allocation of authority between counsel and the client shall be managed in accordance with *Louisiana's Rules of Professional Conduct*, having particular regard to rules 1.2, 1.4, 1.14 and 1.16.

2. Counsel serves as the representative of the client and shall abide by the client's decisions regarding the objectives of the representation. However, counsel shall provide the client with his or her professional opinions with regard to the objectives of the representation. In counseling the client, counsel shall refer not only to the law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make informed decisions. Counsel shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and may take such action as is impliedly authorized by the representation.

3. The attorney shall explain to the client those decisions that ultimately rest with the client and the advantages and disadvantages inherent in these choices. Counsel shall abide by the client's decision, made after meaningful consultation with counsel, as to a plea to be entered, whether to waive jury trial, whether the client will testify, and whether to appeal. However, counsel shall not abide by such a decision where the client is incompetent, including where the client is, in the circumstances, incapable of making a rational choice not substantially affected by mental disease, disorder or defect. In such circumstances, counsel should take the steps described in these standards relating to the representation of persons with diminished capacity and the raising of the client's incompetence.

4. Strategic and tactical decisions should be made by counsel after consultation with the client where feasible and appropriate. When feasible and appropriate, counsel and other team members should seek the client's input regarding

decisions to be made in the case. Counsel should candidly advise the client regarding the probable success and consequences of adopting any particular posture in the proceedings, and provide the client with all information necessary to make informed decisions. Counsel should provide the client with his or her professional opinion on what course to adopt whenever possible. In order to ensure that consultation with the client is meaningful, counsel should make accommodations where necessary due to a client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, cultural differences, and circumstances of incarceration.

5. While counsel is ordinarily responsible for determining the means by which the objectives of representation are to be accomplished, where the client revokes counsel's express or implied authority to take a particular course of action, counsel may not act as the agent of the client without that authority. This will not prevent counsel from taking professionally responsible steps required by these Standards but counsel must not purport to be speaking on behalf of or otherwise acting as the agent of the client.

6. Counsel shall not take action he or she knows is inconsistent with the client's objectives of the representation. Counsel may not concede the client's guilt of the offense charged or a lesser included offense without first obtaining the consent of the client.

7. Where counsel and the client disagree as to the means by which the objectives of the representation are to be achieved counsel should consult with the client and seek a mutually agreeable resolution of the dispute. Counsel should consult with the case supervisor and utilize other defense team members in his or her efforts to resolve a dispute.

8. Where the client seeks to discharge counsel, every reasonable effort should be made to address the client's grievance with counsel and avoid discharge. Counsel should caution the client as to the possible negative consequences of discharging or attempting to discharge counsel and the likely result if any such attempt. Should the client persist with his desire to discharge counsel, the case supervisor and responsible agency should be immediately informed and counsel may request a substitution of counsel by the responsible agency. Counsel must move to withdraw when actually discharged by the client.

9. Where the client insists upon taking action with which the counsel has a fundamental disagreement or the representation has been rendered unreasonably difficult by the client, counsel shall advise the case supervisor and may request a substitution of counsel by the responsible agency. Where a substitution of counsel is not permitted, counsel may move to withdraw from the representation only with the prior consent of the responsible agency.

10. Any withdrawal of counsel, including a substitution of counsel, should occur with the leave of the court. Should the court refuse counsel leave to withdraw, then counsel should continue to represent the defendant.

11. Where counsel or a client make a reasonable request for substitution of counsel, the district defender or state public defender, as appropriate, shall take all reasonable steps to substitute counsel. Where substitution of counsel is not possible, every effort should be made to avoid the withdrawal or discharge of counsel, including the assignment of additional counsel, consultation with persons experienced in resolving such disputes and providing counsel access to expert advice and training designed to assist in resolving the dispute.

12. A client's capacity to make adequately considered decisions in connection with the representation may be diminished, whether because of mental impairment or for some other reason. Where counsel reasonably believes that the client has diminished capacity, he or she should:

a. as far as reasonably possible, maintain a normal client-lawyer relationship with the client;

b. if the client is at risk of substantial harm unless action is taken and the client cannot adequately act in his own interests, take reasonably necessary protective action. Such action may include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In appropriate cases, counsel may seek the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests;

c. in taking any protective action, be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

13. If counsel believes that the client will now or in the future seek to abandon some or all of the mitigation case or waive appellate or post-conviction review, counsel should notify the case supervisor and appropriate action should be taken to respond to this situation. Given the gravity and complexity of this situation, counsel and the case supervisor should consider consultation with additional counsel experienced and skilled in this area.

14. The client has a right to view or be provided with copies of documents in counsel's file. Acknowledging the dangers of case related materials being held in custodial facilities, counsel should strongly advise the client against maintaining possession of any case related material. Counsel should provide alternatives to satisfy the client's requests, such as more frequent visits with team members to review relevant documents in a confidential setting, or transferring file to successor counsel. Upon the termination of the representation, the client will ordinarily be entitled to counsel's entire file upon request.

G. Assembling the Defense Team

1. Counsel are to be assigned in accordance with the capital defense guidelines. Where possible, lead counsel should participate in the decision of who should be assigned as additional counsel. Lead counsel should advocate for the assignment of additional counsel with the skills, experience and resources appropriate to the provision of high quality representation in the case. Lead counsel should have regard to his or her own strengths and weaknesses in recommending the assignment of additional counsel in order to ensure the formation of a defense team capable of providing high quality representation to the client in the particular case.

2. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these performance standards and the associated guidelines. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these standards, unless the standard specifically imposes the duty on "lead counsel."

3. As soon as practical after assignment and at all stages of a capital case, the director of the law office assigned the case, the contracting agency or lead counsel should assemble a defense team by:

a. providing advice regarding the number and identity of the additional counsel to be assigned;

b. selecting and making any appropriate staffing, employment or contractual agreements with non-attorney team members in such a way that the defense team includes:

i. at least one mitigation specialist and one fact investigator;

ii. at least one member with specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

iii. individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's history;

iv. sufficient support staff, such as secretarial, law clerk and paralegal support, to ensure that counsel is able to manage the administrative, file management, file review, legal research, court filing, copying, witness management, transportation and other practical tasks necessary to provide high quality representation; and

v. any other members needed to provide high quality legal representation, including people necessary to: reflect the seriousness, complexity or amount of work in a particular case; meet legal or factual issues involving specialist knowledge or experience; ensure that the team has the necessary skills, experience and capacity available to provide for the professional development of defense personnel through training and case experience; or, for other reasons arising in the circumstances of a particular case.

4. In selecting team members, lead counsel should have specific regard to the overall caseload of each team member (whether indigent, pro bono or privately funded) and should monitor the caseloads of all team members throughout the representation. Counsel should have regard to the benefits of a racially and culturally diverse team.

5. Where staff assignments to a team are made by the director of a law office or the contracting agency, rather than lead counsel, lead counsel remains responsible for ensuring that the staffing assignments and the defense team are in compliance with the Capital Guidelines and Performance Standards and are sufficient to permit high quality representation.

6. The defense team refers to those persons directly responsible for the legal representation of the client and those persons directly responsible for the fact and mitigation investigation. While others may assist the defense team, including lay and expert witnesses, they are not a part of the defense team as that term is used in this Section. The mitigation specialist retained as a part of the defense team is not intended to serve as a testifying witness and, if such a witness is necessary, a separate expert mitigation specialist should be retained.

7. Team members should be fully instructed on the practices and procedures to be adopted by the team, including the procedure for communication and decision-making within the team and how such matters will be recorded in the client file. Team meetings should be conducted no less than once every two weeks and should, wherever possible, include the in-person attendance of all team members. Team meetings should have an agenda and a record of the matters discussed, tasks assigned and decisions made at the team meeting should be maintained in the client file. All members of the team should be encouraged to participate and contribute.

8. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should promptly take the steps necessary to ensure that the defense team receives the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make an adequate record to preserve the issue for judicial review and seek such review. It is the responsibility of counsel to be fully aware of the potential resources available to assist in the representation of the client and the rules and procedures to be followed to seek and obtain such resources.

9. While lead counsel bears ultimate responsibility for the performance of the defense team and for decisions affecting the client and the case, all additional counsel should ensure that the team and its members are providing high quality representation in accordance with these Performance Standards and associated Guidelines.

10. In general, counsel should avoid assigning one lawyer to handle the guilt-innocence phase and another lawyer to handle the penalty phase.

H. Scope of Representation

1. Counsel should represent the client in the matter assigned from the time of assignment until relieved by the assignment of successor counsel or by order of the court.

2. Ordinarily, counsel representing a capital defendant should assume responsibility for the representation of the defendant in all pending criminal and collateral proceedings involving the client for which counsel is adequately qualified and experienced. Counsel should represent the client in any new criminal proceeding arising during the course of the capital representation. Counsel should investigate and commence appellate or collateral proceedings regarding other criminal convictions of the client where the favorable resolution of such an action is likely to be of significance in the capital proceeding. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the capital proceeding.

3. Where it is not appropriate for counsel to assume the representation of the defendant in other proceedings due to a lack of appropriate experience or qualifications, lack of sufficient resources, or for other reasons, counsel should take all reasonable steps to ensure that appropriately qualified counsel is representing the client and is, where possible, capitally certified.

4. Counsel should maintain close communication with and seek the cooperation of counsel representing the client in any other proceeding to ensure that such representation does not prejudice the client in his capital proceedings and is conducted in a manner that best serves the client's interests in light of the capital proceedings.

5. Where counsel's representation of a defendant is limited in its scope, lead counsel should ensure that the limitation is reasonable in the circumstances and obtain the client's informed consent to the limited scope of the representation. In obtaining informed consent, lead counsel should explain the exact limits of the scope of the representation, including both those purposes for which the client will and will not be represented. Where possible, the agreement to provide representation that is limited in its scope should be communicated in writing.

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§1905. Performance Standard 2: Relations with Client

A. Counsel's Obligation to Build and Maintain Relationship with Client

1. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust and confidence with the client, and should maintain close contact with the client. Representation of a capital client should proceed in a client-centered fashion with a strong emphasis on the relationship between the defense team and the client.

2. Counsel should make every appropriate effort to overcome barriers to communication and trust, including those arising from the client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, and cultural differences, circumstances of incarceration, prior experiences in the criminal justice system, and prior experiences of legal representation. Where barriers to communication or trust with counsel cannot be adequately overcome to allow for high quality representation of the client, the capital case supervisor should be informed, and such further steps as are necessary should be taken. In an appropriate case, this may include seeking the assignment of additional counsel or other team members or the substitution of counsel.

3. Lead counsel should ensure that the defense team as a whole is able to establish and maintain a relationship of trust and confidence with the client. Where a particular team member is unable to overcome barriers to communication or trust, lead counsel should take all reasonable steps to remedy the problem. Where the relationship cannot be sufficiently improved, lead counsel should strongly consider removing or replacing the team member, or seeking removal or replacement from the director of the law office or contracting agency.

4. Understanding that a relationship of trust and confidence with the client is essential to the provision of effective representation of a capital client, the defense team must take all reasonable steps to ensure that both the representation provided and the manner in which that representation is provided operate to develop and preserve such a relationship.

5. Understanding that regular contact and meaningful communication are essential to the provision of effective representation of a capital client, the defense team should take all reasonable steps to ensure that the client is able to communicate regularly with the defense team members in confidential circumstances and should ensure that the client is visited by defense team members frequently, particularly where the client is in custody. Counsel may rely upon other members of the defense team to provide some of the required contact with the client, but visits by other team members cannot substitute for counsel's own direct contact with the client. Given lead counsel's particular responsibilities, visits by other counsel in the case cannot substitute for lead counsel's own direct contact with the client.

6. In a trial level case, a capital client should be visited by a member of the defense team no less than once every week, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to trial. In a trial level case a capital client should be visited by an attorney member of the defense team no less than once every two weeks and by lead counsel no less than once month, though visits by counsel would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during, and following trial.

7. In an appellate or post-conviction case, a capital client may be visited less frequently, but regular communication and actual visits remain critical to effective representation. In an appellate or post-conviction case, a capital client should be visited by a member of the defense team no less than once every two weeks, by an attorney member of the defense team no less than once a month and by lead counsel no less than once every two months, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during, and following any major hearing and in the lead up to any execution date.

8. In all capital cases, where barriers to communication or trust exist or the circumstances call for more frequent contact, visits by defense team members, including counsel, should be as frequent as necessary to ensure high quality representation and to protect the interests of the client.

9. Counsel at all stages of the case need to monitor the client's physical, mental, and emotional condition and consider any potential legal consequences or adverse impact upon the adequate representation of the client. Counsel should monitor the client's physical, emotional, and mental condition throughout the representation both personally, through the observations of other team members and experts, and through review of relevant records. If counsel observes changes in the client's appearance or demeanor, counsel should promptly conduct an investigation of any circumstances contributing to this change, and take all reasonable steps to advance the best interests of the client. Recognizing the potential adverse consequences for the representation inherent in any substantial impairment of the

client's physical, mental and emotional condition, counsel should take all reasonable steps to improve the client's physical, mental and emotional condition where possible.

10. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

a. the progress of and prospects for the investigation and what assistance the client might provide;

b. current or potential legal issues;

c. current or potential strategic and tactical decisions, including the waiver of any rights or privileges held by the client;

d. the development of a defense theory;

e. presentation of the defense case;

f. potential agreed-upon dispositions of the case, including any possible disposition currently acceptable to the prosecution;

g. litigation deadlines and the projected schedule of case-related events; and

h. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

11. Counsel shall inform the client of the status of the case at each step and shall provide information to the client regarding the process and procedures relevant to the case, including any anticipated time frame.

12. In the absence of a specific agreement to the contrary, counsel shall provide the client with a copy of each substantive document filed or entered in the case by the court and any party. Counsel shall warn any incarcerated client of the dangers of keeping case related material in a custodial environment and take steps to ensure that the client may have reasonable access to the documents and materials in the case without the necessity of keeping the documents in the prison.

13. Upon disposition of the case or any significant issue in the case, counsel shall promptly and accurately inform the client of the disposition.

14. Counsel should treat the client with respect. Counsel should never demean, disparage, or be hostile towards the client. It is the responsibility of lead counsel to ensure that all members of the defense team satisfy this standard.

15. Counsel shall respond in a timely manner to all correspondence from a client, unless the correspondence is wholly unreasonable in its volume or interval.

16. Counsel should maintain an appropriate, professional office and should maintain a system for receiving regular collect telephone calls from incarcerated clients. Counsel should provide incarcerated clients with directions on how to contact the office via collect telephone calls (e.g. what days and/or hours calls will be accepted). Counsel should determine whether telephone communications will be confidential and where they are not, should take all reasonable steps to ensure that privileged, confidential, or potentially damaging conversations are not conducted during any monitored or recorded calls.

17. Counsel should advise the client at the outset of the representation and frequently remind the client regarding his rights to silence and to counsel.

a. Counsel should carefully explain the significance of remaining silent, and how to assert the rights to silence and counsel. Counsel should specifically advise the client to assert his rights to silence and counsel if approached by any state actor seeking to question him about the charged offense, any other offense, or any other matter relevant to guilt, penalty, or a possible claim for relief. Counsel should take all reasonable steps to assist the client in asserting these rights, including providing a written assertion of rights for the client to use and asserting these rights on behalf of the client. Counsel should have regard to any special need or vulnerability of the client likely to impact his effective assertion of his rights.

b. In particular, counsel should advise the client not to speak with police, probation officers, or other government agents about the offense, any related matters, or any matter that may prove relevant in a penalty phase hearing without the presence of counsel. The client should be advised not to speak or write to any other person, including family members, friends, or co-defendants, about any such matters. The client should also be advised not to speak to any state or court appointed expert without the opportunity for prior consultation with counsel.

c. Counsel should also be conscious of the possible interest of media organizations and individual journalists and should advise the client not to communicate with the media, except as a part of a considered strategy undertaken on the advice of counsel.

18. If counsel knows that the client will be coming into contact with a state actor in circumstances relevant to the representation, counsel should seek to accompany the client to prevent any potentially harmful statements from being made or alleged.

B. Counsel's Initial Interviews with Client

1. Recognizing that first contact with a capital client is an extremely important stage in the representation of the client, counsel should take all reasonable steps to conduct a prompt initial interview designed to protect the client's position, preserve the client's rights, and begin the development of a relationship of trust and confidence.

2. Counsel should take all reasonable steps to ensure that the client's rights are promptly asserted, that the client does not waive any right or entitlement by failing to timely assert the right or make a claim, and that any exculpatory or mitigating evidence or information that may otherwise become unavailable is identified and preserved.

3. Counsel should ensure that a high level of contact is maintained at the outset of the representation that is at least sufficient to begin to develop a relationship of trust and confidence, and to meaningfully communicate information relevant to protecting the client's position and preserving the client's rights.

4. An initial interview of pre-trial clients should be conducted within twenty-four hours of counsel's entry into the case unless exceptional circumstances require counsel to postpone this interview. In that event or where the client is being represented in appellate or post-conviction proceedings, the interview should be conducted as soon as reasonably possible.

5. If non-certified counsel is meeting with the client before the assignment of appropriately certified counsel, the

information obtained should ordinarily be limited to that necessary to advise the client concerning the current procedural posture of the case and to provide for the assertion of the client's rights to silence and to counsel.

6. Preparing for the Initial Interview:

a. prior to conducting the initial interview of a pre-trial client, counsel should, where possible and without unduly delaying the initial interview:

i. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

ii. obtain copies of any relevant documents that are available, including copies of any charging documents, warrants and warrant applications, law enforcement and other investigative agency reports, autopsy reports, and any media accounts that might be available; and,

iii. consult with any predecessor counsel to become more familiar with the case and the client.

b. In addition, where the pre-trial client is incarcerated, counsel should:

i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

iii. be familiar with any procedures available for reviewing the trial judge's setting of bail.

c. prior to conducting the interview of a client at appellate and post-conviction stages, counsel should, where possible and without unduly delaying the initial interview:

i. be familiar with the procedural posture of the case;

ii. obtain copies of any relevant documents that are available that provide information on the nature of the offense and the conduct and outcome of prior stages of the proceedings;

iii. consider consulting with any predecessor counsel to become more familiar with the case and the client.

7. Conducting the Interviews

a. Counsel should not expect to adequately communicate all relevant information or begin to develop the necessary relationship with the client in a single interview but should undertake an initial series of interviews designed to achieve these goals. Given the peculiar pressures and issues presented in a capital case, counsel should seek to develop a relationship of trust and confidence before questioning the client about matters relevant to the offense or mitigation.

b. Counsel should always interview the client in an environment that protects the attorney-client privilege. Counsel should take reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and client in courthouses, lock-ups, jails, prisons, detention centers, hospitals, forensic mental health facilities and other places where clients confer with counsel.

c. Counsel should take all reasonable steps to ensure, at the initial interview and in all successive interviews and proceedings, that barriers to communication and trust are overcome.

d. The scope and focus of the initial interviews will vary according to the circumstances of the case, the circumstances of the client, and the circumstances under which the interviews occur.

e. Information to be provided to the client during initial interviews includes, but is not limited to:

i. the role of counsel and the scope of representation, an explanation of the attorney-client privilege, the importance of maintaining contact with counsel, and instructions not to talk to anyone, including other inmates, about the facts of the case or matters relevant to the sentencing hearing without first consulting with the attorney;

ii. describing the other persons who are members of the defense team, how and when counsel or other appropriate members of the defense team can be contacted and when counsel or other members of the defense team will see the client next;

iii. a general overview of the procedural posture and likely progression of the case, an explanation of the charges, potential penalties, and available defenses;

iv. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs; e.g., medical or mental health attention, contact with family or employers;

v. realistic answers, where possible, to the client's most urgent questions;

vi. an explanation of the availability, likelihood, and procedures that will be followed in setting the conditions of pretrial release; and

vii. a detailed warning of the dangers with regard to the search of client's cell and personal belongings while in custody, and the fact that conversations with other inmates, telephone calls, mail, and visitations may be monitored by jail officials. The client should also be warned of the prevalence and danger presented by jailhouse informants making false allegations of confessions by high profile prisoners and advised of the strategies the client can employ to protect himself from such false allegations.

f. Information that should be acquired as soon as appropriate from the client includes, but may not be limited to:

i. the client's immediate medical needs and any prescription medications the client is currently taking, has been prescribed or might require;

ii. whether the client has any pending proceedings, charges, or outstanding warrants in or from other jurisdictions or agencies (and the identity of any other appointed or retained counsel);

iii. the ability of the client to meet any financial conditions of release or afford an attorney;

iv. the existence of potential sources of important information which counsel might need to act immediately to obtain and/or preserve.

g. Appreciating the unique pressure placed upon capital defendants and the extremely sensitive nature of the enquiries that counsel must make, counsel should exercise great caution in seeking to explore the details of either the alleged offense or matters of personal history until a

relationship of trust and confidence has been established that will permit full and frank disclosure.

h. Where possible, counsel should obtain from the client signed release forms necessary to obtain client's medical, psychological, education, military, prison, and other records as may be pertinent.

i. Counsel should observe, and consider arranging for, documentation of any marks or wounds pertinent to the case, and secure and document any transient physical evidence.

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§1907. Performance Standard 3: Investigation

A. Counsel's Responsibility to Investigate

1. Counsel has an ongoing duty to conduct a high quality, independent, exhaustive investigation of all matters relevant to the guilt phase, penalty phase, any possible agreed upon disposition, any potential claim for relief, and any possible reduction of the case to a non-capital prosecution. A high quality, exhaustive investigation will be prompt, thorough, and independent.

2. Counsel should act promptly to ensure that the client is not prejudiced by the loss or destruction of evidence or information, whether in the form of physical evidence, records, possible witness testimony or information from a non-testifying witness. Counsel should take reasonable steps to gather and preserve evidence and information at risk of loss or destruction for later use in the case or for use by successor counsel. These steps may include retaining an expert to gather, preserve or examine evidence before it is altered or destroyed or to interview witnesses who may become unavailable. Counsel should be conscious of any procedural limitations or time bars and ensure that the investigation be conducted in a timely fashion to avoid any default or waiver of the client's rights. Similarly, counsel should be aware of or promptly become aware of the period for which relevant records are retained and ensure that the investigation be conducted in a timely fashion to avoid the destruction of relevant records.

3. The investigation relevant to the guilt phase of the trial should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

4. The investigation relevant to the penalty phase of the trial should be conducted regardless of any statement by the client that evidence bearing upon the penalty is not to be collected or presented. This investigation should comprise extensive and ongoing efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence or argument that may be offered by the prosecutor.

5. No area of inquiry or possible evidence in the guilt or penalty phase investigations should be ruled out until a thorough investigation has been conducted. Counsel should seek to investigate all available evidence and information and defer strategic decisions regarding what evidence to present until after a thorough investigation has been conducted. Both at guilt and penalty phases, counsel should not halt investigation after one seemingly meritorious defense theory has been discovered, but should continue to investigate, both following up on evidence supporting known defense theories and seeking to discover other potential defense theories.

6. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should not rely on a prior defense team's investigation or theory of the case, but rather should independently and thoroughly investigate and prepare the defense, especially where prior counsel had a conflict of interest, or there is reason to believe counsel's performance was deficient.

7. Counsel are responsible for ensuring that a high quality, exhaustive investigation is conducted but are not personally responsible for performing the actual investigation. A team should be assembled containing sufficient members possessing the appropriate skills and resources to conduct a high quality and exhaustive investigation.

B. Conduct of the Investigation

1. Counsel should conduct a high quality, independent and exhaustive investigation of all available sources of information utilizing all available tools including live witness interviews, compulsory process, public records law, discovery, scene visits, obtaining releases of confidential information, pre-trial litigation, the use of experts in the collection and analysis of particular kinds of evidence and audio/visual documentation. Principle sources of information in an investigation will include: information obtained from the client; information and statements obtained from witnesses; discovery obtained from the state; records collected; physical evidence; and direct observations.

2. A high quality, independent and exhaustive investigation will include investigation to determine the existence of other evidence or witnesses corroborating or contradicting a particular piece of evidence or information.

3. A high quality, independent and exhaustive investigation will include an investigation of all sources of possible impeachment of defense and prosecution witnesses.

4. Information and evidence obtained in the investigation provided should be properly preserved by memo, written statement, affidavit, or audio/video recordings. The manner in which information is to be obtained and recorded should be specifically approved by lead counsel having regard to any discovery obligations which operate or may be triggered in the case. In particular, the decision to take signed or recorded statements from witnesses should be made in light of the possibility of disclosure of such statements through reciprocal discovery obligations. Documents and physical evidence should be obtained and preserved in a manner designed to allow for its authentication and with regard to the chain of custody.

5. A high quality, exhaustive investigation should be conducted in a manner that permits counsel to effectively impeach potential witnesses, including state actors and records custodians, with statements made during the investigation. Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

6. A written record should be kept of all investigative activity on a case, including all record requests and responses and attempts to locate and interview witnesses, whether successful or unsuccessful. The written record should be sufficient to allow counsel to identify and prove, if necessary, when, where and under what circumstances each piece of information or evidence was obtained. The written record should also be sufficient to allow counsel to identify and prove that the investigation disclosed an absence of relevant information or evidence, for example, where a record custodian denies possession of relevant records or a witness denies knowledge of a relevant fact.

7. Counsel should conduct a high quality, exhaustive investigation of matters relevant to guilt and penalty phase, bearing in mind at all times the relevance of all information sought and obtained to each phase of the trial. Such an investigation shall extend beyond the particular client and the particular offense charged and include an investigation of: other charged or uncharged bad acts that may be alleged directly or as impeachment; any co-defendant or alleged co-conspirator; any alternate suspects; any victim or victims; relevant law enforcement personnel and agencies; and, forensic and other experts involved in the case.

8. Considerations in respect of particular sources of information will include the following.

a. Interviews with the client should be conducted in accordance with performance standard 2.B. In particular, counsel should be conscious of the need for multiple interviews, a relationship of trust and confidence with the client and for interviews on sensitive matters to be conducted by team members with appropriate skill and experience in conducting such interviews.

b. When interviewing witnesses, live witness interviews are almost always to be preferred and telephone interviews will rarely be appropriate. Barring exceptional circumstances, counsel should seek out and interview all potential witnesses including, but not limited to:

i. eyewitnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;

ii. potential alibi witnesses;

iii. witnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects:

(a). members of the client's immediate and extended family;

(b). neighbors, friends and acquaintances who knew the client or his family throughout the various stages of his life;

(c). persons familiar with the communities where the client and the client's family live and have lived;

(d). former teachers, coaches, clergy, employers, co-workers, social service providers, and doctors;

(e). correctional, probation or parole officers;

iv. witnesses to events other than the offense charged that may prove relevant to any affirmative defense or may be relied upon by the prosecution in its case in chief or in rebuttal of the defense case; and

v. government experts who have performed the examinations, tests, or experiments.

c. Discovery should be conducted in accordance with performance standard 5.F.

d. Counsel should be familiar with and utilize lawful avenues to compel the production of relevant records beyond formal discovery or compulsory process, including, the Public Records Law, the Freedom of Information Act, statutory entitlements to records such as medical treatment, military service, social security, social services, correctional and educational records. Counsel should also be familiar with and utilize avenues to obtain records through voluntary release and publicly available sources including web based searches and social media.

i. Counsel should strive to obtain records by means least likely to alert prosecution to the investigative steps being taken by the defense or the content of the records being obtained.

ii. Where appropriate, counsel should seek releases or court orders to obtain necessary confidential information about the client, co-defendant(s), witness(es), alternate suspect(s), or victim(s) that is in the possession of third parties. Counsel should be aware of privacy laws and procedural requirements governing disclosure of the type of confidential information being sought.

iii. Unless strategic considerations dictate otherwise, counsel should ensure that all requests, whether by compulsory process, public records law, or other specific statutory procedures, are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with such requests and must maintain a system for tracking requests that have been made: following up on requests; triggering enforcement action where requests are not complied with; documenting where responses have been received; and, identifying which documents have been received in response to which requests and on what date.

iv. Counsel should obtain all available information from the client's court files. Counsel should obtain copies of the client's prior court file(s), and the court files of other relevant persons. Counsel should also obtain the files from the relevant law enforcement and prosecuting agencies to the extent available.

v. Counsel should independently check the criminal records for both government and defense witnesses, and obtain a certified copy of all judgments of conviction for government witnesses, for possible use at trial for impeachment purposes.

e. Counsel should move promptly to ensure that all physical evidence favorable to the client is preserved, including seeking a protective court order to prevent destruction or alteration of evidence. Counsel should make a prompt request to the police or investigative agency for access to any physical evidence or expert reports relevant to the case. Counsel should examine and document the condition of any such physical evidence well in advance of trial. With the assistance of appropriate experts, counsel should reexamine all of the government's material forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Counsel should investigate not only the accuracy of the results of any forensic testing, but also the legitimacy of the methods used to conduct the

testing and the qualifications of those responsible for the testing.

f. Counsel should take full advantage of the direct observation of relevant documents, objects, places and events by defense team members, experts and others.

i. Counsel should attempt to view the scenes of the alleged offense and other relevant events as soon as possible after counsel is assigned. The visit to any relevant scene should include visiting under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions). Counsel should extensively, precisely, and accurately document the condition of any relevant scene using the most appropriate and effective means, including audio-visual recordings, diagrams, charts, measurements, and descriptive memoranda. The condition of the scenes should always be documented in a manner that will permit counsel to identify and prove the condition of the scenes without personally becoming a witness. Where appropriate, counsel should obtain independently prepared documentation of the condition of the scenes, such as maps, charts, property records, contemporaneous audio-visual recordings conducted by media, security cameras or law enforcement.

ii. Counsel should exercise the defendant's right to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state.

iii. Counsel for a client with one or more co-defendants should attend hearings of co-defendants, even if the issue at stake does not seem directly relevant to the client. Counsel should be particularly interested in discovering the strength of the prosecution's case against the co-defendant, and the similarities and differences between a co-defendant's defense and the client's.

iv. Counsel should also attend potentially relevant hearing involving state or defense witnesses.

C. Duty of Counsel to Conduct Penalty Phase Investigation

1. Counsel should lead the defense team in a structured and supervised mitigation investigation where counsel is coordinating and, to the extent possible, integrating the case for life with the guilt phase strategy.

2. Despite the integration of the two phases of the trial, counsel should be alert to the different significance of items of evidence in the two phases and direct the investigation of the evidence for the penalty phase accordingly. Where evidence is relevant to both phases, counsel should not limit the investigation to guilt phase issues, but should further develop the mitigating evidence into a compelling case for life to be stressed at the penalty phase. All information obtained in the guilt phase investigation should be assessed for its significance to the penalty phase and, where possible, the guilt phase theory should reflect this assessment. Counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment, and conduct the investigation and development of evidence accordingly.

3. Counsel should direct the investigation of mitigating information as early as possible in the case. Mitigation investigation may affect many aspects of the case including the investigation of guilt phase defenses, charging decisions and related advocacy, motion practice, decisions about needs for expert evaluations, client relations and communication, and plea negotiations.

4. Counsel has an ongoing duty to conduct a high quality, independent and exhaustive investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death.

5. Counsel should investigate all available sources of information and use all appropriate avenues to obtain all potentially relevant information pertaining to the client, his siblings, parents, and other family members extending back at least three generations, including but not limited to: medical history consisting of complete prenatal, pediatric, and adult health information (including hospitalizations, mental and physical illness or injury, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage); exposure to harmful substances in utero and in the environment; substance abuse and treatment history; mental health history; history of maltreatment and neglect; trauma history (including exposure to criminal violence, exposure to war, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences); educational history (including achievement, performance, behavior, activities, special educational needs including cognitive limitations and learning disabilities, and opportunity or lack thereof); social services, welfare, and family court history (including failures of government or social intervention, such as failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities), employment and training history (including skills and performance, and barriers to employability); military experience (including length and type of service, conduct, special training, combat exposure, health and mental health services); immigration experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile criminal and correctional experience; religious, gender, sexual orientation, ethnic, racial, cultural and community influences; socio-economic, historical, and political factors.

6. Counsel should not refrain from fully investigating potentially double-edged mitigation and such an investigation should include the full context of the mitigating evidence so as to reduce any potentially negative impact of such evidence at trial or to ensure that the mitigating effect of the evidence outweighs any negatives that may arise from the introduction of the evidence. Counsel should adopt such strategies as are necessary to reduce any potentially negative impact of such evidence, including effective voir dire, motions in limine, limiting instructions and the presentation of other evidence designed to maximize the mitigating effect of the evidence and reduce its negative potential.

7. While the client and the client's immediate family can be very important sources of information, they are far from the only potentially significant and powerful sources of information for mitigation evidence, and counsel should not limit the investigation to the client and his or her family.

Further, when evaluating information from the client and the client's family, counsel should consider any impediments each may have to self-reporting or self-reflection.

8. Counsel should exhaustively investigate evidence of any potential aggravating circumstances and other adverse evidence that may be used by the state in penalty phase to determine how the evidence may be rebutted or mitigated.

a. Counsel should interview all known state witnesses for the penalty phase, including any expert witnesses.

b. Counsel's investigation of any prior conviction(s) which may be alleged against the client should include an investigation of any legal basis for overturning the conviction, including by appellate, state post-conviction or federal habeas corpus proceedings. Where such a basis exists, counsel should commence or cause to be commenced litigation directed to overturning the conviction. Representation in such proceedings should be determined in accordance with standard 1.H.

c. Counsel should actively consider the evidence that the state may be permitted to present in rebuttal of the defense case at penalty phase and investigate the evidence to determine how the evidence may be excluded, rebutted or mitigated.

9. Counsel should exhaustively investigate the possibility that there exists any absolute bar to the imposition of the death penalty.

a. Counsel should conduct a high quality, independent, exhaustive investigation to determine whether the client may suffer from intellectual disability. Counsel should not rely on his or her own assessment or impression of the client in determining whether the client has a viable claim of mental retardation as intellectual disability may be difficult to accurately assess and many clients will mask such disability even at the risk of their lives. Where a potential intellectual disability claim exists, the defense team should include members with expertise in the recognition, investigation and development of evidence of intellectual disability as well as the litigation of issues of intellectual disability. Where the defense team does not contain sufficient expertise in this regard, lead counsel should use all available avenues to secure additional counsel or other team members with expertise in investigating and litigating issues of intellectual disability.

b. In view of the decision of *Roper v. Simmons*, 543 U.S. 551 (2005), especially in cases involving foreign born clients, where the client's date of birth may be difficult to document, a special investigation may be required to ascertain the true "age" of the client to ensure that he is "death eligible" and, if not, ensure that the client is not exposed to the possibility of a death sentence.

c. Counsel should attempt to identify and develop other grounds which, though currently not providing an absolute bar to imposition of a death sentence, may in the future provide such exemption, such as serious mental illness, post-18 cognitive impairment, or guilt as a principal not directly responsible for the death.

d. Counsel should ensure that the presentation of evidence of an absolute bar to the death penalty, such as intellectual disability, is not limited to bare proof of the dispositive fact but fully presents the mitigating effect of the evidence, including the continuing mitigating effect of the evidence even where the evidence does not wholly satisfy the legal bar to the death penalty.

10. Counsel should direct team members to conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than death. Counsel should not fail to seek to interview any of the client's immediate family members. Multiple interviews will be necessary to establish trust, elicit sensitive information, and conduct a thorough and reliable life-history investigation. Team members should endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a capital sentencing proceeding

11. Counsel should direct team members to gather documentation to support the testimony of expert and lay witnesses, including, but not limited to, school, medical, employment, military, criminal and incarceration, and social service records, in order to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state, intellectual capacity, and life history that may explain or diminish the client's culpability for his conduct, demonstrate the absence of aggressive patterns in the client's behavior, show the client's capacity for empathy, depict the client's remorse, illustrate the client's desire to function in the world, give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison, explain possible treatment programs, rebut or explain evidence presented by the prosecutor, or otherwise support a sentence less than death. Records should be reviewed as they are received by the team so that any gaps in the evidence can be discovered and filled, further areas of investigation can be uncovered and pursued, and the defense theory can properly incorporate all available documentary evidence.

12. Counsel should direct team members to provide counsel with documentary evidence of the investigation through the use of such methods as memoranda, genealogies, social history reports, chronologies and reports on relevant subjects including, but not limited to, cultural, socioeconomic, environmental, racial, and religious issues in the client's life. The manner in which information is provided to counsel is determined on a case by case basis, in consultation with counsel, considering jurisdictional practices, discovery rules and policies.

13. Counsel should ensure that the investigation develops available evidence to humanize the client in the eyes of the jury, reflect the client's inherent dignity and value as a human being, demonstrate the client's positives and provide a basis for demonstrating these matters through factually valid narratives and exhibits, rather than merely adjectives. The investigation shall focus more broadly than identifying the causes of any offending conduct.

14. After thorough investigation counsel should begin selecting and preparing witnesses who will testify, who may include but are not limited to:

a. lay witnesses, or witnesses who are familiar with the client or his family, including but not limited to:

i. the client's family and those familiar with the client;

ii. the client's friends, teachers, classmates, co-workers, employers, and those who served in the military

with the client, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history, military experience and religious, racial, and cultural experiences and influences upon the client or the client's family;

iii. social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

iv. witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

v. former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;

vi. witnesses who can testify about the applicable alternative to a death sentence and/or the condition under which the alternative sentence would be served;

vii. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones;

b. expert witnesses, or witnesses with specialized training or experience in a particular subject matter. Such experts include, but are not limited to:

i. medical doctors, psychiatrists, psychologists, toxicologists, pharmacologists, social workers and persons with specialized knowledge of medical conditions, mental illnesses and impairments; neurological impairment (brain damage); substance abuse, physical, emotional and sexual maltreatment, trauma and the effects of such factors on the client's development and functioning;

ii. anthropologists, sociologists and persons with expertise in a particular race, culture, ethnicity, religion;

iii. persons with specialized knowledge of specific communities or expertise in the effect of environments and neighborhoods upon their inhabitants;

iv. persons with specialized knowledge about gangs and gang culture; and

v. persons with specialized knowledge of institutional life, either generally or within a specific institution, including prison security and adaptation experts.

15. Counsel should direct team members to aid in preparing and gathering demonstrative evidence, such as photographs, videotapes and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts and letters of praise or reference.

D. Securing the Assistance of Experts

1. Counsel should secure the assistance of experts where appropriate for:

a. an adequate understanding of the prosecution's case and the preparation and presentation of the defense including for consultation purposes on areas of specialized knowledge or those lying outside counsel's experience;

b. rebuttal of any portion of the prosecution's case at the guilt or sentencing phase of the trial;

c. investigation of the client's competence to proceed, capacity to make a knowing and intelligent waiver of constitutional rights, mental state at the time of the offense, insanity, diminished capacity and competence to be executed; and

d. obtaining an agreed disposition or assisting the client make a decision to accept or reject a possible agreed disposition.

2. An expert is retained to assist counsel in the provision of high quality legal representation. It is counsel's responsibility to provide high quality legal representation and the hiring of an expert, even a well-qualified expert, will not be sufficient to discharge this responsibility. Counsel has a responsibility to support and supervise the work of an expert to ensure that it is adequate and appropriate to the circumstances of the case.

3. When selecting an expert, counsel should consult with other attorneys, mitigation specialists, investigators and experts regarding the strengths and weaknesses of available experts. Counsel should interview experts and examine their credentials and experience before hiring them, including investigating the existence of any significant impeachment that may be offered against the expert and reviewing transcripts of the expert's prior testimony. If counsel discovers that a retained expert is unqualified or his opinions and testimony will be detrimental to the client, counsel should replace the expert and where appropriate, seek other expert advice.

4. When retaining an expert, counsel should provide clear information regarding the rate of payment, reimbursement of expenses, the method of billing, the timing of payment, any cap on professional fees or expenses and any other conditions of the agreement to retain. Counsel should ensure that the expert is familiar with the rules of confidentiality applicable in the circumstances and where appropriate, have the expert sign a confidentiality agreement. Counsel should monitor the hours of work performed and costs incurred by an expert to ensure that the expert does not exceed any pre-approved cap and in order to certify that the expert's use of time and expenses was appropriate in the circumstances.

5. Defense counsel should normally not rely on one expert to testify on a range of subjects, particularly where the witness lacks sufficient expertise in one or more of the areas to be canvassed. Counsel should determine whether an expert is to be used as a consulting expert or may testify in the case and should make appropriate distinctions in communications with the expert and disclosure of the identity and any report of the expert to the state. Counsel should use separate experts in the same field for consultation and possible testimony where the circumstances of the case make this necessary or appropriate.

6. Counsel should not simply rely on the opinions of an expert, but should seek to become sufficiently educated in the field to make a reasoned determination as to whether the hired expert is qualified, whether his or her opinion is defensible, whether another expert should be hired, and ultimately whether the area of investigation should be further pursued or abandoned.

7. Experts assisting in investigation and other preparation of the defense should be independent of the

court, the state and any co-defendants. Expert work product should be maintained as confidential to the extent allowed by law. Counsel and support staff should use all available sources of information to obtain all necessary information for experts. Counsel should provide an expert with all relevant and necessary information, records, materials, access to witnesses and access to the client within sufficient time to allow the expert to complete a thorough assessment of the material provided, conduct any further investigation, formulate an opinion, communicate the opinion to counsel and be prepared for any testimony. Ordinarily, counsel should not retain an expert until a thorough investigation has been undertaken.

8. Counsel should not seek or rely upon an expert opinion in the absence of an adequate factual investigation of the matters that may inform or support an expert opinion. While an expert may be consulted for guidance even where relatively little factual investigation has been completed, counsel may not rely upon an expert opinion in limiting the scope of investigation, making final decisions about the defense theory or determining the matters to be presented to any court in the absence of a factual investigation sufficiently thorough to ensure that the expert's opinion is fully informed and well supported. Ultimately, it is the responsibility of counsel, not the expert, to ensure that all relevant material is gathered and submitted to the expert for review.

9. Counsel should ensure that any expert who may testify is not exposed to privileged or confidential information beyond that which counsel is prepared to have disclosed by the witness during his or her testimony.

E. Development of a Strategic Plan for the Case

1. During investigation and trial preparation, counsel should develop and continually reassess a strategic plan for the case. This should include the possible defense theories for guilt phase, penalty phase, agreed upon disposition, litigation of the case and, where appropriate, litigation of the case on appeal and post-conviction review.

2. The defense theory at trial should be an integrated defense theory that will be reinforced by its presentation at both the guilt and penalty phase and should minimize any inconsistencies between the theories presented at each stage and humanize the client as much as possible. Counsel should strongly consider, with the consent of the client, forgoing a guilt-innocence phase plan that denies the defendant had any involvement in the offense and instead attempt to raise doubts about whether the offense was a first-degree murder (e.g., because of the defendant's role, mental state or intent).

3. A strategy for the case should be developed from the outset of counsel's involvement in the case and continually updated as the investigation, preparation and litigation of the case proceed. Counsel should not make a final decision on the defense theory to be pursued at trial or foreclose inquiry into any available defense theory until a high quality, exhaustive, independent investigation has been conducted and the available strategic choices fully considered.

4. However, a defense theory for trial should be selected in sufficient time to allow counsel to advance that theory during all phases of the trial, including jury selection, witness preparation, motions, opening statement, presentation of evidence, closing argument and jury instructions. Similarly, the defense theory for the post-verdict, appellate and post-conviction stages of the proceedings be selected in sufficient time to allow counsel to advance that theory in the substantive filings and hearings in the case.

5. In arriving at a defense theory counsel should weigh the positive aspects of the defense theory and also any negative effect the theory may have, including opening the door to otherwise inadmissible evidence or waiving potentially viable claims or defenses.

6. From the outset of counsel's involvement in the case, a strategic planning document or documents should be produced in writing and maintained in the client's file. The strategic planning document should be amended as the investigation, preparation and litigation of the case proceed to accurately reflect the current theory or theories. The strategic planning document should be made available to all members of the defense team to assist in coordinating work on the case. However, it should remain privileged and not be shared with non-team members or any team member or expert who may testify.

7. The current strategic planning document and any prior drafts of the document should be maintained in the client's file. The capital case supervisor should be given access to the strategic planning document and any prior drafts to assist in the supervision and support of the defense team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:58 (January 2015).

§1909. Performance Standard 4: Agreed Dispositions

A. Duty of Counsel to Seek an Agreed Disposition

1. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition.

2. After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition of the charges rather than proceeding to a trial or continuing with proceedings seeking judicial or executive review. In doing so counsel should fully explain the rights that would be waived by a decision to enter a plea or waive further review, the possible collateral consequences, and the legal factual and contextual considerations that bear upon that decision. Counsel should advise the client with complete candor concerning all aspects of the case, including a candid opinion as to the probable outcome. Counsel should make it clear to the client that the ultimate decision to enter a plea of guilty or waive further review has to be made by the client.

3. Counsel should keep the client fully informed of any discussions or negotiations for an agreed disposition and promptly convey to the client any offers made by the prosecution for an agreed disposition. Counsel shall not accept or reject any agreed-upon disposition without the client's express authorization.

4. Initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Despite a client's initial opposition, counsel should engage in an ongoing effort to persuade the client to pursue an agreed disposition that is in the client's best interest.

Consideration of an agreed disposition should focus on the client's interests, the client's needs and the client's perspective.

5. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting investigation and litigation. Ongoing negotiations should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

B. Formal Advice Regarding Agreed Dispositions

1. Counsel should be aware of, and fully explain to the client:

a. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses, and any mandatory (minimum) punishment, sentencing enhancements, habitual offender statutes, mandatory consecutive sentence requirements including restitution, fines, assessments and court costs;

b. any collateral consequences of potential penalties less than death including but not limited to forfeiture of assets, deportation or the denial of naturalization or of reentry into the United States, imposition of civil liabilities, loss of parental rights, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, potential federal prosecutions, and the use of the disposition adverse to the client in penalty phase proceedings of other prosecutions of him, as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;

c. any registration requirements including sex offender registration and job specific notification requirements;

d. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements including any possible and likely sentence enhancements or parole consequences;

e. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentence;

f. available drug rehabilitation programs, psychiatric treatment, and health care;

g. the possible and likely place of confinement;

h. credit for pretrial detention;

i. the effect of good-time credits on the client's release date and how those credits are earned and calculated;

j. eligibility for correctional programs, work release and conditional leaves;

k. deferred sentences, conditional discharges and diversion agreements;

l. probation or suspension of sentence and permissible conditions of probation;

m. parole and post-prison supervision eligibility, applicable ranges, and likely post-prison supervision conditions; and

n. possibility of later expungement and sealing of records.

2. Counsel should be completely familiar with, and fully explain to the client:

a. concessions the client may make as part of an agreed disposition, including:

i. to waive trial and plead guilty to particular charges;

ii. to decline from asserting or litigating any particular pretrial motions; or to forego in whole or in part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications. However, the client should receive independent legal advice before being asked to waive any future claim of ineffective assistance of counsel.

iii. to proceed to trial on a particular date or within a particular time period;

iv. to enter an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case, or to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs;

v. to provide the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

vi. to enter an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

vii. to enter an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

viii. to enter an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

ix. to enter agreements such as those described in the above subsections respecting actual or potential charges in another jurisdiction.

b. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. that the death penalty will not be sought;

ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

iii. that the client will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

iv. that the client will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

v. that the client may enter a conditional plea to preserve the right to further contest certain legal issues;

vi. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

vii. that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

viii. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

ix. that the prosecution will not present certain information, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, or will engage in or refrain from engaging in other actions with regard to sentencing;

x. such as those described in Subsections (i)-(ix) respecting actual or potential charges in another jurisdiction.

c. the position of any alleged victim (and victim's family members) with respect to conviction and sentencing. In this regard, counsel should:

i. consider whether interviewing or outreach to an alleged victim (or a victim's family members) is appropriate;

ii. consider to what extent the alleged victim or victims (or a victim's family members) might be involved in the plea negotiations;

iii. be familiar with any rights afforded the alleged victim or victims (and a victim's family members) under La. Const. Art I, § 25, R.S. 46:1841 et seq., or other applicable law; and

iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

3. In conducting plea negotiations, counsel should be familiar with and should fully explain to the client:

a. the various types of pleas that may be agreed to, including a plea of guilty, a nolo contendere plea in which the client is not required to personally acknowledge his or her guilt (*North Carolina v. Alford*, 400 U.S. 25 (1970)), and a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error (*State v. Crosby*, 338 So.2d 584 (La. 1976));

b. the advantages and disadvantages of each available plea according to the circumstances of the case; and

c. whether any plea agreement is or can be made binding on the court and prison and parole authorities, and whether the client or the state has a right to appeal the conviction and/or sentence and what would happen if an appeal was successful.

4. In conducting plea negotiations, counsel should become familiar with and fully explain to the client, the practices, policies, and concerns of the particular jurisdiction, judge and prosecuting authority, probation department, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations.

5. In conducting plea negotiations counsel should be familiar with and fully explain to the client any ongoing exposure to prosecution in any other jurisdiction for the same or related offending and where possible, seek to fully resolve the client's exposure to prosecution for the offending and any related offending.

C. The Advice and Decision to Enter a Plea of Guilty

1. Subject to considerations of diminished capacity, counsel should abide by the client's decision, after meaningful consultation with counsel, as to a plea to be entered.

2. Counsel should explain all matters relevant to the plea decision to the extent reasonably necessary to permit the client to make informed decisions regarding the appropriate plea. In particular, counsel should investigate and explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense at both guilt and penalty phase and on appellate post-conviction and habeas corpus review.

3. Counsel should carefully and thoroughly explore the client's understanding of the matters explained including, in particular, the procedural posture of his case, the trial and appellate process, the likelihood of success at trial, the likely disposition at trial and the practical effect of each disposition, the practical effect of each available plea decision and counsel's professional advice on which plea to enter.

4. In providing the client with advice, counsel should refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make an informed decision having regard to these considerations.

5. Counsel should pursue every reasonable avenue to overcome any barriers to communication and trust in discussing a possible agreed disposition. Counsel should take all reasonable steps to ensure that the client's capacity to make a decision in his own best interests is not impaired, for example, by the effects of mental health, family dysfunction or conditions of confinement.

6. The considerations applicable to the advice and decision to enter a plea of guilty will also apply to the decision to enter into an agreed disposition in an appellate or post-conviction posture.

D. Entering the Negotiated Plea before the Court

1. Notwithstanding any earlier discussions with the client, prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense;

d. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been

accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court;

e. ensure that the client is mentally competent and psychologically capable of making a decision to enter a plea of guilty;

f. be satisfied that the client admits guilt or believes there is a substantial likelihood of conviction at trial, and believes that it is in his or her best interests to plead guilty under the plea agreement rather than risk the consequence of conviction after trial; and

g. be satisfied that the state would likely be able to prove the charge(s) against the client at trial.

2. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

3. Subsequent to the acceptance of the plea, counsel should review and explain the plea proceedings to the client, and respond to any questions or concerns the client may have.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:63 (January 2015).

§1911. Performance Standard 5: Pre-Trial Litigation

A. Obligations regarding Court Hearings

1. Counsel should prepare for and attend all court proceedings involving the client and/or the client's case. Counsel should be present, alert and focused on client's best interests during all stages of the court proceedings.

2. As soon as possible after entry of counsel into the case, counsel should provide general advice to the client on how court proceedings will be conducted, how the client should conduct himself in court settings, how the client should communicate with counsel and others in the court setting and how the client should react to events in court. Counsel should advise the client on appropriate demeanor and presentation in court and take reasonable steps to assist the client in maintaining an appropriate demeanor and presentation.

3. Prior to any court hearing, counsel should meet with and explain to the client the purpose and procedure to be followed at the hearing. Where the client may be directly addressed by the court or asked to speak on the record, counsel should warn the client in advance and advise the client on how to proceed. Counsel should advise the client that he has the right to confer with counsel before answering any question, even if it means interrupting the proceedings.

4. Counsel should take all necessary steps to overcome any barriers to communication or understanding by the client during court proceedings, including the use of interpreters, slowing the rate of proceedings, taking adequate breaks, using appropriate language and explaining proceedings to the client during the hearing.

5. Counsel should document in the client's file a summary of all pertinent information arising from each court hearing and take particular care to memorialize communications and events that will not appear in the court record or transcript.

6. Counsel should ensure that the court minutes and any transcript accurately reflect the orders, statements and events occurring in court and that all exhibits have been marked, identified and placed into the record.

B. Obligations of Counsel Following Arrest

1. Counsel or a representative of counsel have an obligation to meet with incarcerated clients for an initial interview within 24 hours of counsel's initial entry into the case, barring exceptional circumstances, and shall take other prompt action necessary to provide high quality legal representation including:

a. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoking any waivers of these protections purportedly given by the client, as soon as practicable by correspondence and a notice of appearance or other pleading filed with the State and court. More specifically, counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate and assert the client's right to counsel at any post-arrest procedure such as a line-up, medical evaluation, psychological evaluation, physical testing or the taking of a forensic sample.

b. where possible, ensuring that capitally certified counsel shall represent the client at the first appearance hearing conducted under La. C.Cr.P. art. 230.1 in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full bond hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

2. Prior to indictment, counsel should take steps to secure the pretrial release of the client where such steps will not jeopardize the client's ability to defend against any later indictment. Where the client is unable to obtain pretrial release, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health and security needs are being met.

3. While counsel should only seek to submit evidence for the client to the grand jury in exceptional cases, counsel should consider in each particular case whether such an application is appropriate in the circumstances.

4. Where counsel is assigned to the case of a capital defendant arrested outside of Louisiana, counsel should immediately contact any attorney representing the client in the jurisdiction of arrest to share information as appropriate and coordinate the representation of the client. Where the client is not represented in the jurisdiction of arrest, counsel should take all reasonable steps to arrange effective representation for him. Ordinarily, counsel should travel to the jurisdiction of arrest to consult with and provide legal advice to the client with respect to the capital case and the ramifications for the capital case of waiving or contesting extradition. Counsel should conduct the initial interviews with the client, the assertion and protection of the client's rights and the investigation of the case, including the circumstances of the arrest, in accordance with these standards, regardless of whether the client is being held in the jurisdiction of arrest or has been extradited to Louisiana.

Counsel should not wait for the client to be extradited before commencing active representation of the client.

C. Counsel's Duties at the Preliminary Hearing

1. In the absence of exceptional circumstances, counsel should move for a preliminary hearing in all pre-indictment cases. Counsel should move for and attempt to secure a preliminary hearing in a timely fashion having regard to prosecution practices in the particular jurisdiction and the likely timing of any indictment.

2. While the primary function of the preliminary hearing is to ensure that probable cause exists to hold the client in custody or under bond obligation, the hearing may provide collateral advantages for the client by: creating a transcript of cross-examination of state's witnesses for use as an impeachment tool; preserving testimony favorable to the client of a witness who may not appear at trial; providing discovery of the state's case; allowing for more effective and earlier preparation of a defense; and, persuading the prosecution to refuse the charges or accept lesser charges for prosecution.

3. Counsel should conduct as thorough an investigation of the case as is possible in the time allowed before the preliminary hearing to best inform strategic decisions regarding the subpoenaing of witnesses and the scope and nature of cross-examination. Counsel should fully exercise the rights to subpoena and cross-examine witnesses to seek a favorable outcome at the preliminary hearing and maximize the collateral advantages to the client of the proceedings.

4. In preparing for the preliminary hearing, the attorney should be familiar with:

a. the elements of each of the offenses alleged;

b. the requirements for establishing probable cause;

c. factual information which is available concerning the existence of or lack of probable cause;

d. the tactics of full or partial cross-examination, including the potential impact on the admissibility of any witness' testimony if they are later unavailable for trial and how to respond to any objection on discovery grounds by showing how the question is relevant to probable cause;

e. additional factual information and impeachment evidence that could be discovered by counsel during the hearing; and

f. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

5. Counsel should not present defense evidence, especially the client's testimony, except in unusual circumstances where there is a sound tactical reason that overcomes the inadvisability of disclosing the defense case at this stage.

D. Counsel's Duties at Arraignment

1. Where possible, capitally certified counsel should be assigned prior to arraignment and should represent the client at arraignment.

2. Counsel should preserve the client's rights by entering a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so.

3. If not already done, counsel should assert the client's fifth and sixth amendment rights to silence and to counsel and should review with the client the need to remain silent.

4. If not already done, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health and security needs are being met.

E. Counsel's Duty in Pretrial Release Proceedings

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release pursuant to C.Cr.P. art. 331, and, where appropriate, to make a proposal concerning conditions of release. Client's charged with capital crimes remain eligible to be admitted to bail even after indictment and counsel should consider and, where appropriate, pursue an application to have the client admitted to bail.

2. Counsel should carefully consider the strategic benefits or risks of making an application for bail, including the timing of any application and any collateral benefits or risks that may be associated with a bail application.

3. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

F. Formal and Informal Discovery

1. Counsel

2. Unless:

a. the precise statutory provision relied upon for the charge or indictment, including any aggravating factors that may be relied upon by the prosecution to establish first degree murder under R.S. 14:30;

b. any aggravating circumstances that may be relied upon by the prosecution in the penalty phase pursuant to La. C.Cr.P. art. 905.4;

c. any written, recorded or oral statement, confession or response to interrogation made by or attributed to the client. Such discovery should, where possible, include a copy of any such confession or statement, the substance of any oral confession or statement and details as to when, where and to whom the confession or statement was made;

d. any record of the client's arrests and convictions and those of potential witnesses;

e. any information, document or tangible thing favorable to the client on the issues of guilt or punishment, including information relevant for impeachment purposes;

f. any documents or tangible evidence the state intends to use as evidence at trial, including but not limited to: all books, papers, documents, data, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

g. any documents or tangible evidence obtained from or belonging to the client, including a list of all items

seized from the client or from any place under the client's dominion;

h. any results or reports and underlying data of relevant physical or mental examinations, including medical records of the victim where relevant, and of scientific tests, experiments and comparisons, or copies thereof, intended for use at trial or favorable to the client on the issues of guilt or punishment;

i. one half of any DNA sample taken from the client;

j. any successful or unsuccessful out-of-court identification procedures undertaken or attempted;

k. any search warrant applications, including any affidavit in support, search warrant and return on search warrant;

l. any other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

m. any other adjudicated or nonadjudicated conduct that may be relied upon by the prosecution in the penalty phase;

n. any victim impact information that may be relied upon by the prosecution in the penalty phase, including any information favorable to the client regarding the victim or victim impact;

o. any statements of prosecution witnesses, though counsel should be particularly sensitive to the effect of any reciprocal discovery obligation triggered by such discovery;

p. any statements of co-conspirators;

q. any confessions and inculpatory statements of co-defendant(s) intended to be used at trial, and any exculpatory statements; and

r. any understanding or agreement, implicit or explicit, between any state actor and any witness as to consideration or potential favors in exchange for testimony, including any memorandum of understanding with a prisoner who may seek a sentence reduction.

3. Counsel should ensure that discovery requests extend to information and material in the possession of others acting on the government's behalf in the case, including law enforcement. This is particularly important where the investigation involved more than one law enforcement agency or law enforcement personnel from multiple jurisdictions.

4. Counsel should take all available steps to ensure that prosecutors comply with their ethical obligations to disclose favorable information contained in rule 3.8(d) of the *Louisiana Rules of Professional Conduct*.

5. Counsel should ensure that discovery requests extend to any discoverable material contained in memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by witnesses or prospective witnesses, other than the client, to the district attorney, or to agents of the state.

6. Counsel should not limit discovery requests to those matters the law clearly requires the prosecution to disclose but should also request and seek to obtain other relevant information and material.

7. When appropriate, counsel should request open file discovery. Where open file discovery is granted, counsel should ensure that the full nature, extent and limitations of the open file discovery policy are placed on the court record. Where inspection of prosecution or law enforcement files is permitted, counsel should make a detailed and complete list of the materials reviewed and file this list into the court record.

8. Counsel should seek the timely production and preservation of discoverable information, documents or tangible things likely to become unavailable unless special measures are taken. If counsel believes the state may destroy or consume in testing evidence that is significant to the case (e.g., rough notes of law enforcement interviews, 911 tapes, drugs, or biological or forensic evidence like blood or urine samples), counsel should also file a motion to preserve evidence in the event that it is or may become discoverable.

9. Counsel should establish a thorough and reliable system of documenting all requests for discovery and all items provided in discovery, including the date of request and the date of receipt. This system should allow counsel to identify and prove, if necessary, the source of all information, documents and material received in discovery, when they were provided and under what circumstances. This system should allow counsel to identify and prove, where necessary, that any particular piece of information, document or material had not previously been provided in discovery.

10. Counsel should scrupulously examine all material received as soon as possible to identify and document the material received, to identify any materials that may be missing, illegible or unusable and to determine further areas of investigation or discovery. Where access is given to documents, objects or other materials counsel should promptly and scrupulously conduct an inspection of these items and carefully document the condition and contents of the items, using photographic or audio-visual means when appropriate. Expert assistance should be utilized where appropriate to ensure that a full and informed inspection of the items is conducted. Where a reproduction of an original document or item is provided (including photocopies, transcripts, photographs, audio or video depictions) counsel should promptly and scrupulously inspect and document the original items in order to ensure the accuracy of the reproduction provided and to identify any additional information available from inspection of the original that may not be available from the reproduction.

11. Counsel should file with the court an inventory of all materials received or inspected in discovery. This inventory should be sufficiently detailed to identify precisely each piece of information, document or thing received including, for example, how many pages a document contained and any pages that may have been missing.

12. Unless strong strategic considerations dictate otherwise, counsel should ensure that all discovery requests are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with discovery demands.

13. Where the state asserts that requested information is not discoverable, counsel should, where appropriate, request an in camera inspection of the material and seek to have the withheld material preserved in the record under seal. Counsel should recognize that a judge undertaking in camera review may not have sufficient understanding of the possible basis for disclosure, especially the ways in which

information may be favorable to defense in the particular case. Where in camera review is undertaken, counsel should take all available steps to ensure that the judge is sufficiently informed to make an accurate assessment of the information, including through the use of ex parte and under seal proffer, where appropriate and permissible.

14. Counsel should timely comply with requirements governing disclosure of evidence by the defendant and notice of defenses and expert witnesses. Counsel also should be aware of the possible sanctions for failure to comply with those requirements. Unless justified by strategic considerations, counsel should not disclose any matter or thing not required by law and should seek to limit both the scope and timing of any defense discovery. Counsel should take all reasonable steps to prevent the prosecution from obtaining private or confidential information concerning the client, including matters such as medical, mental health, social services, juvenile court, educational and financial information.

15. Counsel should understand the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars, lineups, photo show-ups, voice identifications, and physical specimens like blood, semen, and urine), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the required preservation of the record. Counsel should raise appropriate objections to requests for non-testimonial evidence and should insist on appropriate safeguards when these procedures are to occur. Counsel should also prepare the client for participation in such procedures. Counsel should accompany the client, insist that the police not require the client to answer any questions and, if necessary, return to court before complying with the order.

G. The Duty to File Pretrial Motions

1. Counsel at every stage of the case, exercising professional judgment in accordance with these Standards should consider all legal and factual claims potentially available, including all good faith arguments for an extension, modification or reversal of existing law. Counsel should thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.

2. Counsel should give consideration to the full range of motions and other pleadings available and pertinent to a capital case when determining the motions to be filed in the particular case, including motions to proceed ex parte. Counsel should file motions tailored to the individual case that provide the court with all necessary information, rather than pro forma or boilerplate motions. The requirement that counsel file motions tailored to the individual case is not a prohibition against also filing motions that raise previously identified legal issues, nor is it a prohibition on the filing of boilerplate motions where no tailoring of the motion is necessary or appropriate in the case.

3. The decision to file pretrial motions and memoranda should be made after considering the applicable law in light of the circumstances of each case. Each potential claim should be evaluated in light of:

a. the unique characteristics of death penalty law and practice;

b. the potential impact of any pretrial motion or ruling on the strategy for the penalty phase;

c. the near certainty that all available avenues of appellate and post-conviction relief will be pursued in the event of conviction and imposition of a death sentence;

d. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited;

e. the significant limitations placed upon factual development of claims in subsequent stages of the case; and

f. any other professionally appropriate costs and benefits to the assertion of the claim.

4. Among the issues that counsel should consider addressing in pretrial motions practice are:

a. matters potentially developed in early stages of investigation, including:

i. the pretrial custody of the accused;

ii. the need for appropriate, ongoing and confidential access to the client by counsel, investigators, mitigation specialists and experts;

iii. the need for a preliminary hearing, including a post-indictment preliminary hearing;

iv. the statutory, constitutional and ethical discovery obligations including the reciprocal discovery obligations of the defense;

v. the need for and adequacy of a bill of particulars;

vi. the need for and adequacy of notice of other crimes or bad acts to be admitted in the guilt or penalty phase of trial;

vii. the need for and adequacy of notice of any victim impact evidence;

viii. the preservation of and provision of unimpeded access to evidence and witnesses;

ix. the use of compulsory process to complete an adequate investigation, including the possible use of special process servers;

x. the prevention or modification of any investigative or procedural step proposed by the state that violates any right, duty or privilege arising out of federal state or local law or is contrary to the interests of the client;

xi. access to experts or resources which may be denied to an accused because of his indigence;

xii. the defendant's right to a speedy trial;

xiii. the defendant's right to a continuance in order to adequately prepare his or her case;

xiv. the need for a change of venue;

xv. the need to obtain a gag order;

xvi. the need to receive notice of and be present at hearings involving co-defendants and to receive copies of pleadings filed by any co-defendant;

xvii. the dismissal of a charge on double jeopardy grounds;

xviii. the recusal of the trail judge, the prosecutor and/or prosecutor's office;

xix. competency of the client;

xx. intellectual disability;

xxi. the nature, scope and circumstances of any testing or assessment of the client;

xxii. extension of any motions filing deadline or the entitlement to file motions after the expiration of a motions deadline; and

xxiii. requiring the state to respond to motions in writing;

b. matters likely to be more fully developed after comprehensive discovery, including:

i. the constitutionality of the implicated statute or statutes, including the constitutionality of the death penalty or the proposed method of execution;

ii. the potential defects in the grand jury composition, the charging process or the allotment;

iii. the sufficiency of the charging document under all applicable statutory and constitutional provisions, as well as other defects in the charging document such as surplusage in the document which may be prejudicial;

iv. any basis upon which the indictment may be quashed;

v. the adequacy and constitutionality of any aggravating factors or circumstances;

vi. the propriety and prejudice of any joinder of charges or defendants in the charging document;

vii. the permissible scope and nature of evidence that may be offered by the prosecution in aggravation of penalty or by the defense in mitigation of penalty;

viii. the constitutionality of the death penalty both generally and as applied in Louisiana;

ix. abuse of prosecutorial discretion in seeking the death penalty;

x. the suppression of evidence or statements gathered or presented in violation of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional and statutory provisions;

xi. suppression of evidence or statements gathered in violation of any right, duty or privilege arising out of state or local law;

xii. the admissibility of evidence other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

xiii. the admissibility of any unrelated criminal conduct that may be relied upon by the prosecution in the penalty phase;

xiv. the suppression of a prior conviction obtained in violation of the defendant's right to counsel;

xv. notices of affirmative defenses with all required information included; and

xvi. notices necessary to entitle the client to present particular forms of evidence at trial, such as alibi notice and notice of intention to rely upon mental health evidence;

c. matters likely arising later in pretrial litigation and in anticipation of trial, including:

i. *in-limine* motions to exclude evidence that is inadmissible as a result of a lack of relevance, probative force being outweighed by prejudicial effect, the lack of a necessary foundation, failure to satisfy the threshold for expert evidence or for other reasons;

ii. the constitutionality of the scope of and any limitations placed upon any affirmative defense or the use of a particular form of favorable evidence;

iii. the competency of a particular witness or class of witnesses;

iv. the nature and scope of victim impact evidence;

v. *in limine* motions to prevent prosecutorial misconduct or motions to halt or mitigate the effects of prosecutorial misconduct;

vi. matters of trial evidence or procedure at either phase of the trial which may be appropriately litigated by means of a pretrial motion *in limine*;

vii. matters of trial or courtroom procedure, including: recordation of all proceedings, including bench and chambers conferences; timing and duration of hearings; prohibition of ex parte communications; manner of objections; ensuring the client's presence at hearings; medication of the client; avoiding prejudice arising from any security measures;

viii. challenges to the process of establishing the jury venire;

ix. the use of a jury questionnaire;

x. the manner and scope of voir dire, the use of cause and peremptory challenges and the management of sequestration;

xi. the desirability and circumstances of the jury viewing any scene; and

xii. the instructions to be delivered at guilt and penalty phase.

5. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

a. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;

b. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted; and

c. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

6. Counsel should timely file motions according to the applicable rules and case law, provide notice of an intention to file more motions where appropriate, reserve the right to supplement motions once discovery has been completed, offer good cause and seek to file appropriate motions out of time and seek to file necessary and appropriate motions out of time even where good cause for delay is not available. If counsel needs more time to file a motion, counsel should request more time.

7. Counsel should give careful consideration before joining in co-defendants' motions and should avoid any possibility that the client will be deemed to have joined in a co-defendant's motions without a knowing, affirmative adoption of the motions by counsel.

8. As a part of the strategic plan for the case, counsel should maintain a document describing the litigation theory in the case, including a list of all motions considered for filing and the reason for filing or not filing each motion considered. The litigation theory document should also detail

the timing and disposition of all motions. The current litigation theory document and any prior drafts of the document should be maintained in the client's file. The capital case supervisor should be given access to the litigation theory document and any prior drafts to assist in the supervision and support of the defense team.

H. Preparing, Filing, and Arguing Pretrial Motions

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. Counsel should seek an evidentiary hearing for any motion in which factual findings or the presentation of evidence would be in the client's interests. Where an evidentiary hearing is denied, counsel should make a proffer of the proposed evidence.

2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. factual investigation and discovery as well as careful research of appropriate case law relevant to the claim advanced;

b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;

c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client and other defense witnesses testify;

d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial;

e. obtaining the assistance of expert witnesses where appropriate and necessary;

f. careful preparation of any witnesses who are called, especially the client;

g. careful preparation for and conduct of examination or cross-examination of any witness, having particular regard to the possibility that the state may later seek to rely upon the transcript of the evidence should the witness become unavailable;

h. consideration of any collateral benefits or disadvantages that may arise from the evidentiary hearing;

i. obtaining stipulation of facts by and between counsel, where appropriate; and

j. preparation and submission of a memorandum of law where appropriate.

3. When asserting a legal claim, counsel should present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction. Counsel should pursue good faith arguments for an extension, modification or reversal of existing law.

4. Counsel should ensure that a full record is made of all legal proceedings in connection with the claim. If a hearing on a pretrial motion is held in advance of trial, counsel should obtain the transcript of the hearing where it may be of assistance in preparation for or use at trial.

5. In filing, scheduling, contesting or consenting to any pretrial motion, including scheduling orders, counsel should be aware of the effect it might have upon the client's statutory and constitutional speedy trial rights.

I. Continuing Duty to File Motions

1. Counsel at all stages of the case should be prepared to raise during subsequent proceedings any issue which is appropriately raised at an earlier time or stage, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

2. Further, counsel should be prepared to renew a motion or supplement claims previously made with additional factual or legal information if new supporting information is disclosed or made available in later proceedings, discovery or investigation.

3. Where counsel has failed to timely provide a required notice or file a motion, counsel should seek to file the motion or notice out of time regardless of whether good cause exists for the earlier failure to file and be prepared to present any argument for good cause that is available. Where a court bars a notice or motion as untimely, counsel should ensure that a copy of the notice or motion is maintained in the record and available for any subsequent review.

4. Counsel should also renew pretrial motions and object to the admission of challenged evidence at trial as necessary to preserve the motions and objections for appellate review.

5. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the capital proceeding.

J. Duty to File and Respond to Supervisory Writ Applications

1. Where appropriate, counsel should make application for supervisory writs in the Circuit Court of Appeal or the Louisiana Supreme Court following an adverse district court ruling or failure to rule. Counsel should give specific consideration to: the extent to which relief is more likely in an interlocutory posture or after a final decision on the merits of the case; the extent of prejudice from the ruling of the district court and the likely ability to demonstrate that prejudice following a final decision on the merits of the case; the impact of the district court's current ruling on the conduct of the defense in the absence of intervention by a reviewing court; the impact of a ruling by a reviewing court in a writ posture on any subsequent review on direct appeal; the adequacy of the record created in the district court and whether the record for review may be improved through further district court proceedings.

2. Counsel should seek expedited consideration or a stay where appropriate and consider the simultaneous filing of writ applications in the Court of Appeal and Supreme Court in emergency circumstances.

3. Counsel should take great care to ensure that all filings in the Courts of Appeal and the Louisiana Supreme Court comply with the requirement of the relevant rules of Court, including any local rules.

4. Counsel should ensure that an adequate record is created in the district court to justify and encourage the exercise of the supervisory jurisdiction of the Courts of Appeal or Louisiana Supreme Court.

5. Counsel should seek to respond to any state application for supervisory writs except where exceptional circumstances justify the choice not to respond.

6. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including advising the capital case supervisor of the situation and seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

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§1913. Performance Standard 6: Special Circumstances

A. Duties of Counsel at Re-trial

1. The standards for trial level representation apply fully to counsel assigned to represent a client at a re-trial of the guilt or penalty phase. Counsel should be careful to clarify on the record the status of prior rulings made and orders issued in the proceedings. Where appropriate, counsel should seek to renew and re-litigate pre-trial claims, and to raise any new claims which have developed or been discovered since the first trial. Counsel should not rely on the investigation or presentation of evidence from the first trial, but rather should start anew and seek to develop and present all available evidence, with the knowledge gained from the results of the first trial. Except in circumstances where counsel has substantial reason to believe the results will be different or no other witnesses are available, counsel should not present witnesses who provided unhelpful testimony earlier in the case.

B. Continuing Responsibility to Raise Issue of Client's Incompetence

1. Competence is far more likely to be present as an issue in a capital case than a non-capital case due to the high prevalence of mental illness and impaired reasoning in the population of capital clients and the increased likelihood of incompetence due to the nature of the charge, the complexity of the case and the gravity of the decisions with which the client is faced. As a result, counsel should proceed with increased sensitivity to the question of competency and ensure that the defense team has members with sufficient skill and experience to identify and respond to issues relating to competency.

2. Counsel should be sensitive to the increased risk in a capital case that given the nature of the charge, the complexity of capital cases and the life and death stakes of the case a client may not sufficiently understand and appreciate: the nature of the charge and its seriousness; the defenses available at guilt and penalty phase and how each affects the other; the consequences of each available plea on both guilt and penalty phase; and, the range of possible verdicts and the consequences of those verdicts at guilt and penalty phase.

3. In considering the client's ability to assist counsel in a capital case, counsel should have particular regard to the requirement that the client be able to assist counsel not only as to the guilt phase but in the development of the mitigation case and the presentation of the penalty phase case; a process that will include an exhaustive investigation of the client's character, history, record, the offense and other factors which may provide a basis for a sentence less than death. The possibility of a death sentence and the necessity to prepare for and present a penalty phase case greatly increase the complexity and weight of the demands placed upon the client in assisting counsel, including considerations of whether the client: is able to recall and relate facts pertaining to his actions and whereabouts at certain times; is able to maintain a consistent defense; is able to listen to the testimony of witnesses and inform counsel of any distortions or misstatements; has the ability to make simple decisions in response to well explained alternatives; is capable of testifying in his own defense; and, is apt to suffer a deterioration of his mental condition under the stress of trial or at a later stage of the case.

4. Counsel involved in a capital case at stages following the trial should be alert to additional concerns regarding the client's mental state, functioning and ability including existing issues that could be exacerbated by the reality that a death sentence has been imposed, that an execution date is approaching, as well as by the effects of confinement, particularly prolonged confinement, on death row, such as the development or progression of depression or other mental illnesses. Similarly, counsel at later stages should have particular regard to issues such as the client's ability to establish relationships with new counsel at later stages in the case, especially where earlier relationships were difficult for the client, and the client's ability to assist counsel with tasks such as investigations taking place years after the trial when deficiencies such as memory loss may become more pervasive.

5. In every capital case, counsel should conduct a thorough, sensitive and ongoing inquiry into the competence of the client. Where concerns exist about a client's competence, counsel should ensure that the defense team documents in the client's file observations and interactions relevant to the client's competence.

6. Recognizing that raising competency may expose the client himself and otherwise confidential information to state actors, counsel should not raise competency unless satisfied that: a sufficient investigation has been conducted to make a reliable strategic decision in this regard; the client is likely not competent; and, the benefits to the client of raising competency outweigh the negatives. Counsel should consider the possibility that any information disclosed in competency proceedings will become admissible at trial as a result of the client's mental health being placed in issue.

7. In considering whether to raise competence, counsel should take into account all relevant circumstances, including: the likely outcome of an assessment by a sanity commission; the likely outcome of an assessment by a state expert; any negative findings, including malingering findings, that may arise from an assessment of the client; any negative information that may be divulged to the state from a review of records; any waiver of confidentiality arising from raising competence; the impact upon counsel's relationship with the client and his family of raising competence; the impact of raising competence before or during trial on any subsequent guilt or penalty phase presentation; and, the effect on any subsequently available claim that the client was incompetent.

8. The delay caused by raising a question of competence with the court is not a proper reason for raising competence. Seeking to defray defense costs by having a court appointed mental health examination is not a proper reason for raising competence.

9. Prior to raising competence with the court, counsel should consult with a defense mental health expert, including having the expert review the available information and records relating to the client and, where appropriate, assessing the client.

10. Counsel should fully advise the client concerning the procedures for mental examinations, the reasons competence is in question, the possibility of hospitalization, and the consequences of an incompetency determination.

11. Where the court or the state raises the issue of competency, counsel should consider whether it is appropriate to resist any competency examination or advise the client not to cooperate with any such examination.

12. Where a sanity commission is appointed, counsel should ensure that the members of the sanity commission are independent and appropriately qualified. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the sanity commission.

13. Where the state seeks an examination of the client by a physician or mental health expert of the state's choice, counsel should consider opposing or seeking to limit such an examination and should also consider whether to advise the client not to cooperate with any such examination. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the state's expert.

14. Counsel should obtain copies of: each examiner's report, all underlying notes and test materials; and, all records and materials reviewed. Where the client is hospitalized or otherwise placed under observation, counsel should obtain copies of all records of the hospitalization or observation.

15. Counsel should not stipulate to the client's competence where there appears a reasonable possibility that the client is not competent. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing where there is a good faith basis to doubt the client's competency.

16. At the competency hearing, counsel should protect and exercise the client's constitutional and statutory rights, including cross-examining the sanity commissioners and the state's witnesses, calling witnesses on behalf of the client including experts, and making appropriate evidentiary objections. Counsel should make sure that the inquiry does not stray beyond the appropriate boundaries. Counsel should consider the advantages and disadvantages to the client's whole case when determining how to conduct the competency hearing.

17. Counsel may elect to relate to the court personal observations of and conversations with the client to the extent that counsel does not disclose client confidences. Counsel may respond to inquiries about the attorney-client relationship and the client's ability to communicate effectively with counsel to the extent that such responses do not disclose the confidential or privileged information.

18. If a client is found to be incompetent, counsel should advocate for the least restrictive level of supervision and the least intrusive treatment.

19. Where competency is at issue, or where the client has been found incompetent, counsel has a continuing duty to investigate and prepare the case. Where a client has been found unrestorably incompetent, counsel should continue to investigate and prepare the case sufficiently to ensure that the client will not be prejudiced by any delay or hiatus in the preparation of the case should he subsequently be returned to competence and the prosecution resumed.

20. Where a capital client is found incompetent or unrestorably incompetent, capitally certified counsel should remain responsible for all competency reviews.

21. A previously competent client may become incompetent over the course of a case and particularly under the stress of hearings and trial. Counsel should be vigilant and constantly reassess the client's competence and be prepared to raise the matter when appropriate. It is never untimely to raise a question concerning a client's competence.

22. Some clients object strenuously to taking psychotropic medication and counsel may be called upon to advocate for protection of the client's qualified right to refuse medication.

C. Duties of Counsel When Client Attempts to Waive Right to Counsel, and Duties of Standby and Hybrid Counsel

1. When a client expresses a desire to waive the right to counsel, counsel should take steps to protect the client's interests, to avoid conflicts and to ensure that the client makes a knowing, voluntary and intelligent decision in exercise of his rights under the Sixth Amendment and La. Const. art. I, § 13. In particular, counsel should:

a. meet with the client as soon as possible to discuss the reasons the client wishes to proceed pro se and to advise the client of the many disadvantages of proceeding pro se. Such advice should include: the full nature of the charges; the range of punishments; the possible defenses; the role of mitigation prior to and at trial; the complexities involved and the rights and interests at stake;, and the client's capacity to perform the role of defense attorney. Such advice should also include an explanation of the stages of appellate, post-conviction and habeas corpus review of any conviction or sentence, the effect of failing to effectively preserve issues for review and the impact of waiver of counsel on any possible ineffective assistance of counsel claim.

b. if the client maintains an intention or inclination to waive counsel, counsel should immediately inform the capital case coordinator of the client's desire and should request that the capital case coordinator assign independent counsel to advise the client. The capital case coordinator shall immediately assign at least one attorney certified as

lead counsel to consult with the defendant and provide independent advice on the exercise of his Sixth Amendment rights. The role of independent counsel in this situation is not to represent the client in the exercise of his Sixth Amendment rights but instead to ensure that the client receives full and independent legal advice before choosing whether to waive his right to counsel.

c. in addition to seeking the assignment of independent counsel, counsel assigned to represent the defendant should immediately commence a thorough investigation into the question of the defendant's competence to waive counsel and whether, in the circumstances, any such waiver would be knowing, voluntary and intelligent. Such an investigation should not be limited to information obtained from interaction with the client but should include a detailed examination of available collateral sources (including documents and witnesses) as well as consultation with relevant experts.

2. Where a client asserts his right to self-representation counsel has an obligation both to investigate the question of the client's competence and the quality of the purported waiver and to bring before the court evidence raising doubts about these matters. Counsel should submit the case for the client's competent, knowing, voluntary and intelligent waiver to full adversarial testing. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing of the question of the waiver of representation by counsel. Counsel remains responsible for the representation of the client until such a time as the court grants the client's motion to proceed pro se and must continue to perform in compliance with the Capital Guidelines and Performance Standards. Where appropriate, counsel should object to a court's ruling accepting a waiver of counsel, should ensure that the issue is preserved for appellate review and should seek interlocutory review of the decision.

3. Where a capital defendant has been permitted to proceed pro se, counsel should move for the appointment of standby counsel and should seek to persuade the defendant to accept the services of standby counsel. The court may appoint stand by counsel over the defendant's objection and counsel should ordinarily accept such an appointment. The court may place constraints on the role of standby counsel and standby counsel should object to any constraints beyond those required by the Sixth Amendment. Where the quality of the defendant's relationship with counsel assigned to represent the defendant is such that his or her ability to serve as standby counsel would be significantly impaired, the capital coordinator may assign additional counsel and urge the court to appoint such additional counsel as are assigned to the role of standby counsel.

4. Attorneys acting as standby counsel shall comply with the Guidelines and Performance Standards for capital defense to the extent possible within the limitations of their role as standby counsel. Counsel shall not accept appointment as standby counsel unless certified as lead trial counsel or certified as associate trial counsel where certified lead trial counsel is also appointed. Counsel appointed as standby counsel shall be entitled to be remunerated and to have their expenses met in the same manner and to the same extent as they would if assigned to represent a defendant who was not proceeding pro se.

5. With the defendant's consent, and subject to any prohibition imposed by the court, standby counsel may perform any role in the case that counsel would ordinarily perform whether in front of or in the absence of the jury.

6. In the absence of his consent to do otherwise, a pro se defendant must be allowed to preserve actual control over the case he chooses to present to the jury and is entitled to ensure that the jury's perception that he is representing himself is preserved. Accordingly, a defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial.

7. Where the defendant does not consent to the actions of standby counsel, the permissible conduct of standby counsel is different depending on whether the jury is present, the issue is raised solely before a judge or the action is taken entirely out of court.

a. Where the defendant does not consent to the actions of standby counsel, counsel must not in the presence of the jury make or substantially interfere with any significant tactical decisions, control the questioning of witnesses or speak instead of the defendant on any matter of importance. Participation by counsel to steer a defendant through the basic procedures of trial is, however, permissible. Standby counsel should assist the pro se defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony, that the defendant has clearly shown he wishes to complete. Counsel should also assist to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

b. Counsel's participation outside the presence of the jury is far less constrained. Even without the consent of the defendant, counsel may proactively participate in proceedings outside of the presence of the jury as long as the pro se defendant is allowed to address the court freely on his own behalf and disagreements between counsel and the pro se defendant are resolved by the judge in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. Counsel should, in the absence of the jury, take such actions in the case as are consistent with the best interests of the client, including making any objections, and motions as would be consistent with high quality representation of the defendant.

8. Where it appears to standby counsel during the course of the proceedings that the decision to permit the defendant to proceed pro se or any decision to constrain the role of standby counsel should be revisited, counsel should move for reconsideration of those decisions.

9. Without interfering with the defendant's right to present his case in his own way, standby counsel should continue to fully prepare the case in order to be ready to assume responsibility for the representation of the defendant should the court or the defendant reverse the waiver of counsel. Where standby counsel is given or resumes responsibility for the representation of the defendant, counsel should move for all necessary time to prepare a defense for both the guilt and penalty phases of the trial, as appropriate. Where there is reason to believe that the client

may re-invoke his right to counsel, the capital coordinator should ensure that a full defense team remains assigned and available to assume the representation.

D. Counsel's Additional Responsibilities when Representing a Foreign National

1. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals. Unless predecessor counsel has already done so, counsel representing a foreign national should:

a. immediately explain the benefits that the client may obtain through consular assistance;

b. immediately notify the client of the right to correspond with and have access to consular officers from his or her country of nationality via the nearest consulate;

c. with the permission of the client, contact the nearest consulate, and inform the relevant consular officials about the client's arrest and/or detention. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the consulate;

d. where contact is made with the relevant consulate, counsel should discuss what specific assistance the consulate may be able to provide to the client in the particular case;

e. research, consider and preserve any legal rights the client may have on account of foreign nationality status; and

f. consider whether the client's foreign accent, dialect or knowledge of English is such that the client requires an interpreter and, if so, take steps to secure one without delay for the duration of proceedings.

2. Where counsel has reason to believe that the client may be a foreign national, counsel should advise the capital case supervisor. Counsel should ensure that the defense team includes adequate expertise and experience in dealing with the defense of foreign nationals in capital cases and where this is not the case should advise the capital case supervisor and seek additional support, including the assigning of additional counsel.

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§1915. Performance Standard 7: Trial

A. Counsel's Duty of Trial Preparation

1. Throughout preparation and trial, counsel should consider the defense case theory and ensure that counsel's decisions and actions are consistent with that theory. Where counsel's decisions or actions are inconsistent with the theory, counsel should assess and understand why this is the case and then either change the conduct or change the theory to accommodate the new approach.

2. Counsel should complete the investigation, discovery, and research in advance of trial, such that counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. Ordinarily, this process should be sufficiently advanced at least 180 days before trial to ensure that issues related to funding, expert witnesses, witness availability, securing witness attendance and accommodation, witness preparation and other trial preparation can proceed in an orderly and well planned fashion.

3. Counsel should not forgo investigation and preparation of a defense on the basis that the prosecution case appears weak or counsel believes that no penalty phase will be required.

4. Preparation for trial should include:

a. causing subpoenas to be issued for all potentially helpful witnesses, and all potentially helpful physical or documentary evidence:

i. counsel should ensure that all subpoenaed witnesses are aware of the correct date and time to appear in court, the action they should take when they appear in response to the subpoena and how to contact counsel if necessary;

ii. counsel should consider utilizing ex parte procedures for the subpoena of persons, documents or things when available;

iii. counsel should follow up on all subpoenas and follow procedures for informing the court of non-compliance and seeking enforcement;

iv. counsel may refrain from issuing subpoenas for particular witnesses based on strong tactical considerations and in the awareness of the waiver of the defendant's rights to compulsory process that this may entail;

b. arranging for defense experts to consult and/or testify on evidentiary issues that are potentially helpful (e.g., testing of physical evidence, opinion testimony, etc.):

i. adequate arrangements for the funding, scheduling and, where necessary, transport and accommodation of expert witnesses should be made;

ii. counsel should prepare with the experts and should be fully aware of the experts' opinions on all relevant matters, including relevant prior testimony, before deciding whether or not to present them at trial;

iii. counsel should determine the extent to which evidence to be addressed by an expert witness may be presented through lay witnesses;

c. ensuring that counsel has obtained, read and incorporated into the defense theory all discovery, results of defense investigation, transcripts from prior or related proceedings and notices, motions and rulings in the case;

d. obtaining photographs and preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information which may assist the fact finder in understanding the defense;

e. ensuring that the facilities at the courthouse will be adequate to meet the needs of the trial and the defense team.

5. Counsel should have available at the time of trial all material relevant to both the guilt and penalty phases that may be necessary or of assistance at trial, including:

a. copies of all relevant documents filed in the case;

b. relevant documents prepared or obtained by investigators;

c. *voir dire* questions, topics or plans;

d. outline or draft of opening statements for both guilt and penalty phases;

e. cross-examination plans for all possible prosecution witnesses;

f. direct examination plans for all prospective defense witnesses;

g. copies of defense subpoenas and proof of service;

h. prior statements and testimony of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements. Counsel should also be prepared to prove the prior statements if required;

i. prior statements of all defense witnesses;

j. reports from defense experts;

k. a list of all defense exhibits, and the witnesses through whom they will be introduced (as well as a contingency plan for having necessary exhibits admitted if, for example, a witness fails to appear);

l. exhibits, including originals and copies of all documentary exhibits;

m. demonstrative materials, charts, overheads, computer presentations or other similar materials intended for use at trial;

n. proposed jury instructions with supporting case citations, and where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions; and

o. relevant statutes and cases.

6. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. During case preparation and throughout trial, counsel should identify potential legal issues and the corresponding objections or motions. Counsel should consider when and how to raise those objections or motions. Counsel should also consider how best to respond to objections or motions that could be raised by the prosecution.

7. Counsel should anticipate state objections and possible adverse court rulings that may impact the defense case theory, be prepared to address any such issues and have contingency plans should counsel's efforts be unsuccessful. Counsel should consider in advance of trial and prepare for the possibility of any emergency writ applications which may be filed by either party as well as making arrangements to ensure that the defense team is able to efficiently and effectively litigate any unanticipated emergency writ applications.

8. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant, admissibility of particular items of evidence) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

9. Counsel should advise the client as to suitable courtroom dress and demeanor. Counsel should ensure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the client is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint. Counsel should ensure that steps are taken to avoid prejudice arising from any security measures in the court and object to the use of both visible restraints on the client and any concealed restraints that adversely impact the client physically or psychologically or impair the client's ability to consult freely with counsel.

10. Counsel should plan with the defense team the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences and all required court appearances.

11. Counsel should plan with the defense team for contingencies arising from the absence or unavailability of any team member and the procedure for accessing additional resources for the team whenever required. Lead counsel should ensure that additional resources, including legal, investigative and support personnel, are available and utilized as appropriate immediately prior to and during trial. Lead counsel should ensure that all members of the defense team are fully aware of their role and responsibilities at trial.

12. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon the mitigation presentation and any verdict at the penalty phase if there is a finding of guilt.

13. Counsel shall take necessary steps to ensure full, official recordation of all aspects of the court proceeding including motions, bench conferences in chambers or at sidebar, opening statements, closing arguments, and jury instructions. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

14. Counsel should make a written request for a continuance if he or she determines that the defense is not adequately prepared for trial or otherwise not able to present a high quality defense on the scheduled trial date. Counsel should be prepared to proffer a full justification for the continuance, explaining the incomplete preparation, unavailable witness, prejudice from late disclosure by the state or other reason for the continuance. Counsel should be prepared to demonstrate reasonable diligence in preparing for trial but should request any necessary continuance even where counsel has not shown reasonable diligence. Counsel should avoid prematurely exposing the defense case theory by seeking to make any proffer of the reasons for the continuance on an ex parte and under seal basis.

15. Counsel should take all necessary steps to secure conditions of trial that allow for the provision of high quality representation, that allow the client to participate meaningfully in his own defense and that make adequate accommodations for any special needs the client may have. Such conditions may include the hours of court, the number and length of breaks, particular technological resources, the use of interpreters or other assistants to the client's understanding and communication, the pace of questioning and argument, medical assistance for the client and adequate space in the courtroom for the client's family and supporters.

16. Counsel should attempt to present as much mitigation evidence as possible during the guilt-innocence phase.

B. Jury Selection

1. Preparing for *Voir Dire*

a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire,

including the creation of the jury pool from which the venire is selected. Similarly, counsel should be familiar with the law concerning challenges for cause and peremptory challenges and be alert to any potential legal challenges to the law, practice or procedure applied. Counsel should undertake a factual as well as legal investigation of any potential challenges that may be made.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these practices and procedures including any disproportionate impact the practices and procedures may have on the gender or racial makeup of the jury.

c. Counsel should determine whether any special procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Counsel should be mindful that such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.

d. Prior to jury selection, counsel should seek to obtain a prospective juror list and should develop a method for tracking juror seating and selection. Counsel should be aware of available juror information and, where appropriate, should submit a request for a jury questionnaire by a pretrial motion. In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of defense counsel should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

e. Counsel should develop *voir dire* questions in advance of trial. Counsel should tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case for both guilt and penalty phase. Creative use of *voir dire* can foreshadow crucial, complex, expert, detrimental, or inflammatory evidence, and emphasize the need for impartiality notwithstanding the nature of the offense charged. Effective *voir dire* will lay much of the ground work for the opening statement.

f. *Voir dire* questions should be designed to elicit information about the attitudes and values of individual jurors, which will inform counsel and the client in the exercise of peremptory challenges and challenges for cause. Areas of inquiry should include:

i. attitude towards the death penalty and, in particular, each juror's willingness and capacity to return a verdict of death or life if selected as a juror in the case;

ii. attitudinal bias or prejudice (including those based on race, religion, political beliefs, and sexual preference);

iii. pretrial publicity (including the nature, extent and source of the juror's knowledge, and whether they have learned information that will not be admitted at trial; have discussed what they have read or heard; have heard, formed or expressed opinions on guilt or innocence; and can set such knowledge and opinions aside);

iv. feelings regarding the nature of the offense;

v. juror experience (or that of a close relative) similar to evidence in the case;

vi. experience (or that of a close relative) as a crime victim, witness, or defendant;

vii. amount of weight given to testimony of a police officer (including any experience in law enforcement or relationship with those in law enforcement);

viii. acquaintance with witness, counsel or defendant;

ix. attitudes toward defenses;

x. ability to understand principles of law and willingness to accept the law as given by the court;

xi. prior experience as a juror;

xii. formal qualifications to serve as a juror;

xiii. ability to render an impartial verdict according to the law and the evidence; and

xiv. other areas of inquiry particular to the juror, such as whether a bilingual juror is willing to abide by the translator's version of the testimony, or whether a hearing impaired juror will refrain from reading lips of parties having private conversations unintended for the jurors' perception.

g. Among the other purposes *voir dire* questions should be designed to serve are the following:

i. to convey to the panel legal principles which are important to the defense case and to determine the jurors' attitudes toward those legal principles (especially where there is some indication that particular legal principles may not be favored or understood by the population in general or where a principle is peculiarly based on specific facts of the case);

ii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iii. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

iv. to establish a relationship with the jury. Counsel should be aware that jurors will develop impressions of counsel and the defendant, and should recognize the importance of creating a favorable impression.

h. Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

i. Counsel should be familiar with the law concerning challenges for cause and peremptory challenges. *Voir dire* should be responsive to this legal framework and designed to ensure that any basis for a cause challenge is adequately disclosed by the questions and answers.

j. Counsel should be aware of the waiver of judicial review of any cause challenge denied by the trial court where the defense does not exhaust its peremptory challenges. Counsel should create an appropriate record in the trial court where peremptory challenges are exhausted without the defense successfully removing all jurors against whom an unsuccessful challenge for cause had been made.

k. Where appropriate, counsel should consider seeking expert assistance in the jury selection process.

Recognizing the scope of the task of adequately recording all relevant information during the *voir dire* process, lead counsel should ensure that the team has secured adequate resources, in the form of additional personnel or equipment, to adequately perform this task.

2. Examination of the Prospective Jurors

a. Counsel should personally *voir dire* the panel.

b. If the court denies counsel's request to ask questions during *voir dire* that are significant or necessary to the defense of the case, counsel should take all steps necessary to protect the *voir dire* record for judicial review including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

c. Counsel should consider requesting individual, sequestered *voir dire*, particularly in cases where the *voir dire* will canvas sensitive or potentially prejudicial subjects, for example, personal experiences of jurors of abuse, prior exposure to media coverage of the case and knowledge of the case. If particular *voir dire* questions may elicit sensitive or prejudicial answers, counsel should consider requesting that those parts of the questioning be conducted outside the presence of the other jurors. Counsel may also consider requesting that the court, rather than counsel, conduct the *voir dire* as to sensitive questions.

d. In a group *voir dire*, counsel should take care when asking questions which may elicit responses capable of prejudicing other prospective jurors. Counsel should design both questions and questioning style in group *voir dire* to elicit responses in a way that will minimize any negative effect and maximize any favorable effect on other prospective jurors having regard to counsel's objectives in *voir dire*.

e. When asking questions for the purpose of eliciting information from a juror, counsel should usually phrase questions in an open-ended fashion that elicits substantive responses, rather than allowing the juror to respond by silence or with a simple yes or no.

f. Counsel should ensure that the record reflects all answers of all jurors to all questions asked. Counsel should ensure that the record clearly reflects which juror in a panel is being asked a particular question and which gives a particular answer. Where questions are asked of an entire panel or non-verbal responses are given, counsel should ensure that the record accurately reflects all of the responses given and which jurors gave those responses.

g. Counsel should ensure that other members of the defense team are making detailed notes of the responses of individual jurors, the responses of venire panels to more generally directed questions and the demeanor and reactions of members of the venire.

3. Death Qualification

a. Counsel should be intimately familiar with the constitutional, statutory and case law relating to questioning and challenging of potential jurors as they relate to "death qualification."

b. Counsel should apply techniques of *voir dire* designed to overcome the tendency of the process of death qualification to undermine the presumption of innocence and increase the perception of death as the appropriate penalty.

c. Counsel should ensure that an individual inquiry is made of each juror as to his or her views on the death penalty.

d. Counsel should apply techniques of *voir dire* designed to ensure that the view each juror expresses regarding the death penalty:

i. is pertinent to the situation the juror will face in penalty phase (e.g. after hearing all the evidence, full deliberation and a unanimous determination of guilt beyond reasonable doubt);

ii. is in the context of a finding of guilt of first degree murder having regard to the aggravator(s) in the case (e.g. specific intent to kill or cause great bodily harm to a child under 12); and

iii. is not obscured by consideration of any lawful defense or justification that will necessarily have been rejected by penalty phase (e.g. the killing was not in self-defense, he knew the difference between right and wrong, he was not in a sudden passion or heat of blood);

e. Counsel should determine the extent to which each juror could give meaningful consideration to mitigating circumstances, having particular regard to those circumstances defined as mitigating in the statute and the case law.

f. Counsel should determine the extent to which a juror's views on the death penalty or mitigation may substantially impair his or her ability to make an impartial decision at guilt or return a life verdict. Counsel may consider exploring factors such as the strength of the juror's views on the death penalty, the origin of those views, how long they have been held and whether the juror has discussed those views with others.

g. Counsel should apply techniques of *voir dire* designed to insulate jurors who are to be challenged for cause against rehabilitation based, in particular, upon their stated willingness to follow the law;

h. Counsel should mount a challenge for cause in all cases where there is a reasonable argument that the juror's views on the death penalty or mitigation would prevent or substantially impair the performance of the juror's duties in accordance with the instructions or the oath.

i. Counsel should apply techniques of *voir dire* designed to rehabilitate jurors who have expressed scruples against the infliction of capital punishment.

j. Counsel should apply techniques of *voir dire* designed to ensure that each prospective juror understands and accepts:

i. that each juror is entitled to their own opinion and vote and so each juror must individually decide whether the client is sentenced to life or death following a penalty phase;

ii. that while the juror must deliberate, the juror's opinion is not subject to negotiation or compromise and is free from criticism by or explanation to the judge, the prosecutor or others;

iii. that each juror can give life for whatever reason he or she wishes;

iv. that each juror is entitled to the assistance of the court in having his or her opinion respected; and

v. the procedures for bringing penalty phase deliberations to an end and the effect of a hung jury at penalty phase.

k. Counsel should consider exercising peremptory challenges solely or principally on the assessment of each juror's attitude to the death penalty and mitigation.

l. Counsel should document and, where appropriate litigate the effect of death qualification on the representativeness of the qualified jury venire.

4. Other challenges for Cause and Peremptory Challenges

a. Counsel should challenge for cause all prospective jurors against whom a legitimate challenge can be made when it is likely to benefit the client.

b. When a challenge for cause is denied, counsel should consider exercising a peremptory challenge to remove the juror.

c. In exercising challenges for cause and peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available to the state and the defense. In making this decision counsel should be mindful of the law requiring counsel to use one of his or her remaining peremptory challenges curatively to remove a juror upon whom counsel was denied a cause challenge or waive the complaint on appeal, even where counsel ultimately exhausts all peremptory challenges.

d. Counsel should timely object to and preserve for appellate review all issues relating to the unconstitutional exclusion of jurors by the prosecutor or the court.

e. Counsel should request additional peremptory challenges where appropriate in the circumstances present in the case.

5. Unconstitutional Exclusion of Jurors

a. In preparation for trial, during *voir dire* and at jury selection, the defense team should gather and record all information relevant to a challenge to the state's use of peremptory strikes based in part or in whole on race, gender or any other impermissible consideration. This will include: the race and gender of the venire, the panel, the petit jury and the jurors struck for cause and peremptorily; any disparity in questioning style between jurors; a comparative analysis of the treatment of similarly placed jurors; non-verbal conduct of potential jurors; historical evidence of policy, practice or a pattern of discriminatory strikes; and, other evidence of discriminatory intent. Such material should be advanced in support of any challenge to the exercise of a state peremptory strike where available and appropriate in the circumstances. Counsel should ensure that the record reflects the racial and gender composition of the jury pool, the venire, each panel, the peremptory challenges made by both parties, and of the petit jury. The record should also reflect the race and gender of the defendant, the victim(s) and potential witnesses, and any motivation the state may have to have regard to race or gender in exercising peremptory challenges. Counsel should also ensure that, where necessary the record reflects non-verbal conduct by jurors such as demeanor, tone and appearance.

b. Where evidence of the discriminatory use of peremptory strikes, including evidence of the presence of a motive for discriminatory use of peremptory strikes emerges after the jury is sworn, counsel should make or reurge any earlier objection to the state's strikes.

c. Counsel should not exercise a peremptory strike on the basis of race, gender or any other impermissible consideration and should maintain sufficient contemporaneous notes to allow reasons for particular peremptory strikes to be proffered if required by the court.

6. *Voir Dire* After the Jury has been Impanelled

a. Counsel should consider requesting additional *voir dire* whenever potentially prejudicial events occur, for instance, when jurors are exposed to publicity during the trial, jurors have had conversations with counsel or court officials, jurors learn inadmissible evidence, it is revealed that jurors responded incorrectly during *voir dire*, or jurors otherwise violated the court's instructions.

b. Counsel should be diligent and creative in framing questions that not only probe the particular issue, but also avoid creating or increasing any prejudice. Counsel should consider requesting curative instructions, seating alternate jurors, a mistrial, or other corrective measures.

c. If the verdict has already been rendered, counsel should request a post-trial hearing and an opportunity to examine jurors within the scope permitted by law.

C. Objection to Error and Preservation of Issues for Post Judgment Review

1. Counsel should be prepared to make all appropriate evidentiary objections and offers of proof, and should vigorously contest the state's evidence and argument through objections, cross-examination of witnesses, presentation of impeachment evidence and rebuttal. Counsel should be alert for, object to, and make sure the record adequately reflects instances of prosecutorial misconduct.

2. Counsel should make timely objections whenever a claim for relief exists under the law at present or under a good faith argument for the extension, modification or reversal of existing law unless sound tactical reasons exist for not doing so. There should be a strong presumption in favor of making all available objections and any decision not to object should be made in the full awareness that this may constitute an irrevocable waiver of the client's rights.

3. Where appropriate, objections should include motions for mistrial and/or admonishments to ignore or limit the effect of evidence. Counsel should seek an evidentiary hearing where further development of the record in support of an objection would advance the client's interests. Areas in which counsel should be prepared to object include:

a. the admissibility or exclusion of evidence and the use to which evidence may be put;

b. the form or content of prosecution questioning, including during voir dire;

c. improper exercises of prosecutorial or judicial authority, such as racially motivated peremptory challenges or judicial questioning of witnesses that passes beyond the neutral judicial role and places the judge in the role of advocate;

d. the form or content of prosecution argument, including the scope of rebuttal argument;

e. jury instructions and verdict forms; and

f. any structural defects.

4. Counsel should ensure that all objections are made on the record and comply with the formal requirements

applicable in the circumstances for making an effective objection and preserving a claim for subsequent review. These formal requirements may relate to a range of considerations, including: timing of the objection; whether an objection is oral or written; the need to proffer excluded testimony or questions; requesting admonishment of the jury; requesting a mistrial; exhausting peremptory challenges; providing notice to the attorney-general; and, the specific content of the objection. In addition to the objection itself, counsel should ensure that information relevant to potential review is preserved in the record, i.e., that the transcript, the court file, or the exhibits preserved for review include all the information about the events in the trial court that a reviewing court might need to rule in the client's favor.

5. Before trial, counsel should ascertain the particular judge's procedures for objections. If the judge orders that counsel not state the grounds for the objection in the jury's presence, or if the reasons for the objection require explanation or risk prejudicing the jury, counsel should request permission to make the objection out of the hearing of the jury, for example, by approaching the bench. Counsel should ensure that any objection and ruling is made on the record and where this is not possible at a bench conference, should request another procedure for making objections, such as having objections handled in chambers in the presence of the court reporter. Where, despite counsel's efforts, objections are made or rulings announced in the absence of the court reporter, counsel should ensure that those objections and rulings are subsequently placed on the record in as full a detail as possible.

6. Where an objection is made, counsel should state the specific grounds of objection and be prepared to fully explain and argue all bases of the objection. Where a claim for relief exists based on constitutional grounds, counsel should ensure that the record reflects that the objection is brought on those constitutional grounds. Counsel should be particularly careful to ensure that the record reflects the federal nature of any objection based in federal constitutional law or any other federal law.

7. Counsel's arguments to the court should explain both why the law is in the client's favor and why the ruling matters. Arguments should be precise; objections should be timely, clear and specific. For example:

a. if the court excludes evidence, counsel should proffer what the evidence would be, why it is important to the defense, and how its exclusion would harm the defense;

b. if the court limits cross-examination, counsel should proffer what counsel was attempting to elicit and why it is important;

c. if the court admits evidence over defense objection, counsel should, where appropriate, move for a limiting instruction;

d. if the court rules inadmissible prejudicial evidence already placed before the jury, counsel should seek a mistrial and/or an admonishment, as appropriate.

8. Counsel should not refrain from making objections simply because they are unsure of the precise legal principle or case name to invoke. In these situations, counsel should explain the client's position in factual terms, explaining why a certain ruling under specified facts is prejudicial to the client.

9. Counsel should not rely on objections made by co-defendant's counsel unless the judge has made clear that an objection on behalf of one defendant counts as an objection for all defendants. Even in that situation, counsel may want to identify specific prejudice that would befall her client if the court ruled adversely.

10. Counsel should take care not to appear to acquiesce in adverse rulings, by, for example, ending the discussion with comments intended to reflect politeness (e.g. "Thank you, Your Honor") but which may appear in the transcript as an abandonment of counsel's earlier objection and agreement with the trial court's rationale. Accordingly, counsel should find ways to be polite while making clear that the objection has not been abandoned.

11. Counsel should insist on adequate methods for recording demonstrative evidence. For example, diagrams should be drawn on paper instead of blackboards, and demonstrations not amenable to verbal descriptions should be videotaped. Requests for preservation of exhibits and diagrams should be made in a timely manner. Counsel should make sure that all references to exhibits contain the exhibit number.

12. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and accurate and to supplement or correct it as appropriate.

13. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

D. Opening Statement

1. Counsel should make an opening statement.

2. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, including law enforcement, unless a strategic reason exists for not doing so.

3. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's practice regarding the permissible content of an opening statement.

4. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement. For example, if the evidence that the defense might present depends on evidence to be introduced in the state's case, counsel should avoid making promises of what evidence it will present because counsel may decide not to present that evidence. Counsel should not discuss in the opening statement the defense strategy with the jury to the extent that later defense decisions, such as putting the client or particular defense witnesses on the stand can be interpreted as concessions of the prosecution meeting its burden, or of weakness of the defense case. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

5. Before the opening statement, counsel should be familiar with the names of all witnesses and the crucial dates, times and places, and should have mastered each witness's testimony so that favorable portions can be highlighted. If the complainant and defendant know each

other, counsel should consider discussing their relationship and previous activities to create a context for the alleged offense. Counsel may wish to disclose defense witnesses' impeachable convictions, only if counsel is certain that the witnesses will testify. Where evidence is likely to be ruled inadmissible, counsel should refer to it only after obtaining a ruling from the court.

6. Counsel's objectives in making an opening statement may include the following:

a. to provide an overview of the defense case, introduce the theory of the defense, and explain the evidence the defense will present to minimize prejudice from the government case;

b. to identify the weaknesses of the prosecution's case, point out facts that are favorable to the defense that the government omitted in its opening, create immediate skepticism about the direct testimony of government witnesses and make the purpose of counsel's cross-examination more understandable;

c. to emphasize the prosecution's burden of proof;

d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case and to present explanations for government witnesses' testimony, i.e. bias, lack of ability to observe, intoxication and *Giglio* evidence;

e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

f. to clarify the jurors' responsibilities;

g. to point out alternative inferences from circumstantial evidence arising from either the government's case or evidence the defense will present, and to state the ultimate inferences which counsel wishes the jury to draw;

h. to establish counsel's credibility with the jury;

i. to personalize and humanize the client and counsel for the jury; and

j. to prepare the jury for the client's testimony or decision not to testify.

7. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement or the defense summation. Counsel should keep close account of what is proffered. Variances between the opening statement and the evidence may necessitate a mistrial, a cautionary instruction, or prove to be a fruitful ground for closing argument.

8. Whenever the prosecutor oversteps the bounds of proper opening statement (by, for example, referencing prejudicial material or other matters of questionable admissibility and assertions of fact that the government will not be able to prove), counsel should object, requesting a mistrial, or seeking cautionary instructions, unless clear tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

a. the significance of the prosecutor's error;

b. the possibility that an objection might enhance the significance of the information in the jury's mind, or negatively impact the jury; and

c. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

9. Improper statements that counsel should consider objecting to may include:

a. attempts to arouse undue sympathy for the victim of a crime or put the jurors in the shoes of the victim;

b. appeals to the passions and prejudices of the jurors;

c. evidence of other crimes;

d. defendant's prior record;

e. reciting evidence at great length or in undue detail;

f. personal evaluation of the case or of any state's witness;

g. argument on the merits of the case or the pertinent law; and

h. defendant's possible failure to testify on present evidence.

E. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof. Counsel should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems and, where appropriate, challenge its admissibility and/or present other evidence that would controvert the state's evidence. Counsel should make all appropriate challenges to improper testimony. Counsel should challenge improper bolstering of state witnesses.

2. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. If a fact or facts to be stipulated are harmful to the client but there is still an advantage to stipulating, counsel should make certain that the stipulation is true before consenting to a stipulation. While there may be strategic reasons to forgo cross-examination of particular witnesses or objections to evidence, counsel should make sure to subject the state's case to vigorous adversarial testing.

3. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

4. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense and closing argument;

b. consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary, might elicit responses harmful to the defense case or might open the door to damaging and otherwise improper redirect examination;

c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

d. prepare a cross-examination plan for each of the anticipated witnesses;

e. be alert to inconsistencies, variations and contradictions in a witness' testimony;

f. be alert to possible inconsistencies, variations and contradictions between different witnesses' testimony;

g. be alert to significant omission or deficiencies in the testimony of any witnesses;

h. review and organize all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

i. have prepared a transcript of all audio or video tape recorded statements made by the witness;

j. where appropriate, review relevant statutes and local law enforcement policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining law enforcement witnesses;

k. be alert to and raise where appropriate issues relating to witness competency and credibility, including bias and motive for testifying, evidence of collaboration between witnesses, innate physical ability to perceive, external impediments to the witness' perception, psychological hindrances to accurate perception, and faulty memory;

l. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness;

m. be alert to potential Fifth Amendment and other privileges that may apply to any witness;

n. elicit all available evidence to support the theory of defense; and

o. prepare a memorandum of law in support of the propriety of any line of impeachment likely to be challenged.

5. Counsel should consider conducting a *voir dire* examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections. Counsel should not stipulate to the admission of expert testimony that counsel knows will be harmful to the defense where there exists a viable claim regarding its admissibility. Counsel should be alert to frequently encountered competency issues such as: age (chronological and developmental), taint of witness' ability to recall events by external factors such as suggestion, mental disability due to drug or alcohol abuse, and mental illness.

6. Before trial, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses to the extent required by the law. If disclosure was not properly made counsel should consider requesting relief as appropriate including:

a. adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a recess or continuance if necessary;

b. exclusion of the witness' testimony and all evidence affected by that testimony;

c. a mistrial;

d. dismissal of the case; and/or

e. any other sanctions counsel believes would remedy the violation.

7. Counsel should attempt to mitigate the prejudicial impact of physical evidence where possible by: attempting to stipulate to facts that the government seeks to establish through prejudicial evidence, moving to redact irrelevant and unduly prejudicial information from documents, recordings and transcripts, and/or asking the court to exclude part of the proposed evidence as unnecessarily cumulative. Where prejudicial physical evidence will be admitted, counsel should seek to lessen its prejudice by seeking restrictions on the form of the evidence (e.g. size of photographs, black and white, rather than color), the manner of presentation of the evidence and to bar undue emphasis or repetitive presentation of the evidence. Similarly, where necessary, counsel should object to the exclusion or redaction of exculpatory portions of evidence.

8. Counsel should become familiar with all areas in which expert evidence may be offered and should develop a strong knowledge of all forensic fields involved in the case with the assistance of experts as appropriate.

F. Presenting the Defendant's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. Counsel should prepare for the need to adapt the defense strategy during trial where necessary. In extreme cases where a defense theory is no longer tenable, counsel should abandon that theory rather than losing all credibility with the jury, and proceed to emphasize the available defense evidence which supports another theory of defense. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Even where no affirmative defense to guilt is mounted, counsel must be conscious of the potential for the case to proceed to penalty phase and should ensure that the guilt phase is conducted in a way that supports and extracts any available advantages in the guilt phase for the penalty phase presentation. Counsel should be conscious of the perils of a denial defense and the likely negative effect such a defense will have should the case proceed to penalty phase.

2. Counsel should not put on a non-viable defense but at the same time, even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt.

3. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify, including but not limited to, the client's constitutional right to testify, his or her right to not testify, the nature of the defense, the client's likely effectiveness as a witness on direct and under cross-examination, the client's susceptibility to impeachment with prior convictions, bad acts, out-of-court statements or evidence that has been suppressed, the client's demeanor and temperament, and the availability of other defense or rebuttal evidence. Counsel should give special consideration to the likely impact of the client's testimony on any defenses and any possible mitigation presentation, particularly where questions of mental health and mental capacity are in issue. Counsel shall recommend the decision which counsel believes to be in the client's best interest. The ultimate decision whether to testify is the client's. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. The client should be called to testify in a capital case only in rare circumstances, however, counsel should prepare for the possibility that the client's testimony may become essential to the defense case. Therefore, the client should be thoroughly prepared for both direct and cross-examination before trial. Counsel should

familiarize the client with all prior statements and exhibits, and review appropriate demeanor for taking the stand. Counsel should be respectful of the client when conducting the direct examination, eliciting testimony that will be helpful to the client's defense. Counsel should avoid unnecessary direct examination that opens the door to damaging cross examination.

4. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production. Counsel should be familiar with the notice requirements for affirmative defenses and introduction of expert testimony.

5. In preparing for presentation of a defense case, counsel should, where appropriate:

a. consider all potential evidence which could corroborate the defense case, and the import of any evidence which is missing;

b. after discussion with the client, make the decision whether to call any witnesses and, if calling witnesses, decide which witnesses will provide the most compelling evidence of the client's defense. In making this decision, counsel should consider that credibility issues with particular witnesses can be overcome when several witnesses testify to the same facts. Counsel should not call witnesses who will be damaging to the defense;

c. develop a plan for direct examination of each potential defense witness;

d. determine the implications that the order of witnesses may have on the defense case;

e. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

f. consider the possible use and careful preparation of character witnesses, and any negative consequences that may flow from such testimony;

g. consider the need for, and availability of, expert witnesses, especially to rebut any expert opinions offered by the prosecution, and what evidence must be submitted to lay the foundation for the expert's testimony;

h. consider and prepare for the need to call a defense investigator as a witness;

i. review all documentary evidence that must be presented;

j. review all tangible evidence that must be presented;

k. consider using demonstrative evidence (and the witnesses necessary to admit such evidence); and

l. consider the order of exhibit presentation and, if appropriate, with leave of court prior to trial, label each exhibit.

6. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

7. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor, and procedures including sequestration.

8. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence. Counsel should plan for the contingency that particular items of evidence may be ruled inadmissible and prepare for alternative means by which the evidence, or similar evidence, can be offered. Similarly, counsel should have contingency plans for adjusting the defense case theory where important evidence may be ruled inadmissible. Counsel should not seek to have excluded prosecution evidence that is helpful to the defense.

9. Counsel should conduct a direct examination that follows the rules of evidence, effectively presents the defense theory, and anticipates/defuses potential weak points.

10. If a prosecution objection is sustained or defense evidence is improperly excluded, counsel should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.

11. Counsel should object to improper cross-examination by the prosecution.

12. Counsel should conduct redirect examination as appropriate.

13. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

14. Counsel should keep a record of all exhibits identified or admitted.

15. If a witness does not appear, counsel should request a recess or continuance in order to give counsel a reasonable amount of time to locate and produce the witness. Counsel should request any available relief if the witness does not appear.

16. Understanding that capital jurors frequently determine the applicable punishment prior to penalty phase and that the jury in penalty phase will be permitted to rely upon all evidence introduced in the guilt phase, counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment.

G. Preparation of the Closing Argument

1. Counsel should make a closing argument.

2. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

3. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

4. Well before trial, counsel should plan the themes, content, and organization of the summation. The basic argument should be formulated before the first juror is sworn, with accurate notes taken throughout the trial to permit incorporation of the developments at trial. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in pursuit of the defense theory of the case and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case, including what potential corroborative evidence is missing, especially in light of the prosecution's burden of proof;

b. describing favorable inferences to be drawn from the evidence;

c. incorporating into the argument:

i. the theory of the defense case;

ii. helpful testimony from direct and cross-examinations;

iii. verbatim instructions drawn from the expected jury charge;

iv. responses to anticipated prosecution arguments;

v. the promises of proof the prosecutor made to the jury during the opening statement; and

vi. visual aids and exhibits;

d. the effect of the defense argument on the prosecutor's rebuttal argument.

5. Counsel should not demean or disparage or be openly hostile towards the client.

6. Whenever the prosecutor exceeds the scope of permissible argument or rebuttal, counsel should object, request a mistrial, or seek a cautionary instruction unless strong tactical considerations suggest otherwise.

H. Jury Instructions and Verdict

1. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

2. Counsel should always submit proposed jury instructions in writing.

3. Counsel should review the court's proposed jury charge and any special written charge proposed by the state and, where appropriate, counsel should submit special written charges which present the applicable law in the manner most favorable to the defense in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense.

4. Where possible, counsel should provide citations to statute and case law in support of any proposed charge. Counsel should endeavor to ensure that all jury charge discussions are on the record or, at the very least, that all objections and rulings are reflected in the record.

5. Where appropriate, counsel should object to and argue against any improper charge proposed by the prosecution or the court.

6. If the court refuses to adopt a charge requested by counsel, or gives a charge over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of any proposed special written charge is included in the record.

7. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request an additional or curative charge.

8. If there are grounds for objecting to any aspect of the charge, counsel should seek to object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.

9. If the court proposes giving a further or supplemental charge to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge provide a copy of the proposed charge to counsel before it is delivered to the jury. Counsel should be present for any further charge of the jury and should renew or make new objections as appropriate to any further charge given to the jurors after the jurors have begun their deliberations. Counsel should object to any charge which expressly or implicitly threatens to keep the jury sequestered indefinitely until a verdict is reached or is otherwise improperly coercive, for example, by omitting the caution to jurors that they should not abandon their deeply held beliefs.

10. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

11. Upon a finding of guilt, counsel should be alert to any improprieties in the verdict and should request the court to poll the jury. In a multi-count indictment, defense counsel normally should request a poll as to each count on which the jury has convicted.

I. The Defense Case Concerning Penalty

1. Preparation for the sentencing phase should begin immediately upon counsel's entry into the case. Counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation, explains the offense, or rebuts the prosecution's case in aggravation. Counsel should not forgo investigating or presenting mitigation in favor of a strategy of relying only on residual doubt or sympathy and mercy. Counsel should exercise great caution in seeking to rely upon residual doubt as to the defendant's guilt.

2. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt phase.

3. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.

4. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the jury, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.

5. As with the guilt phase, counsel should consider and discuss with the client, the advisability and possible consequences of the client testifying in the penalty phase.

6. Counsel should present to the jury all reasonably available evidence in mitigation unless there are strong strategic reasons to forgo some portion of such evidence. Counsel should make every effort to find a way to successfully present all of the mitigating evidence rather than to abandon a piece or pieces of mitigating evidence due to potential negatives arising from the evidence. Counsel should not make agreements with the prosecution whereby the defense agrees to put on little or no mitigation evidence.

7. Counsel should present mitigating evidence in an organized and coherent fashion, especially when it is of a complex nature involving expert testimony. Counsel should seek to present a narrative of the client's life story that serves to humanize the client and offers a cohesive theory for life rather than presenting each mitigating circumstance as separate and distinct from each other. Counsel should seek to illustrate the ways different pieces of mitigation evidence interrelate to ensure a comprehensive picture of the client's life and the mitigation case is produced. Counsel should consider the need to utilize an expert witness to synthesize or explain various and/or divergent elements of a mitigation

presentation. However, counsel should be conscious of the desirability of presenting such evidence through lay witnesses, rather than relying too heavily upon expert testimony. Counsel should present all mitigating evidence in such a way that it maintains the defense theory of the case, and should avoid presenting or opening the door to evidence that undermines the defense theory.

8. In developing and advancing the defense theory of the case in the penalty phase, counsel should seek to integrate the defense theories at guilt and penalty phase into a complimentary whole or, where this is not possible, seek to minimize any discordance between the defense theories in guilt and penalty phase.

9. In deciding the defense theory in the penalty phase and which witnesses, evidence and arguments to prepare, counsel must exercise a high degree of skill and care as an advocate to determine the most persuasive course to adopt in the circumstances of each particular case. Counsel should consider evidence and arguments that would: be explanatory of the offense(s) for which the client is being sentenced; reduce the client's moral culpability for the offense; demonstrate the client's capacity for rehabilitation or adaptation to prison; demonstrate the client's remorse; rebut or explain evidence presented by the prosecutor; present positive aspects of the client and the client's life; humanize the client; engender sympathy or empathy in the jury,; or would otherwise support a sentence less than death. Counsel should always consider and seek to address the likely concern the jury has regarding the possibility that the client will represent a future danger if sentenced to life imprisonment, rather than death.

10. The witnesses and evidence that counsel should prepare and consider for presentation in the penalty phase include:

a. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;

b. expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation, or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor. Supporting documentation should be read, organized, evaluated and condensed to a form that is most conducive to explaining to the jury how and why this mitigation is relevant.;

c. Witnesses who can testify about the effect of a sentence of life imprisonment and/or the conditions under which a sentence of life imprisonment would be served;

d. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones;

e. demonstrative evidence, such as photos, videos, physical objects and documents that humanize the client, portray him positively or add emphasis to an aspect of the testimony of a witness or witnesses.

f. witnesses drawn from the victim's family or intimates who are able to offer evidence that may support an argument for a sentence other than death.

11. Among topics counsel should consider presenting through evidence and argument are:

a. positive character evidence and evidence of specific positive acts, including evidence of positive relationships with others, contributions to individuals and the community, growth and progress over his life and since arrest, adaptation to incarceration, prospects for rehabilitation during a life sentence and reputation evidence;

b. family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);

c. medical and mental health history (including hospitalizations, mental and physical illness or injury, trauma, intellectual impairment, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage). Evidence relating to medical and mental health matters should normally include the symptoms and effect of any illness rather than just solely presenting a formal diagnosis;

d. educational history (including achievement, performance, behavior, and activities), special educational needs (including mental retardation, cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;

e. military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);

f. employment and training history (including skills and performance, and barriers to employability);

g. record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses;

h. prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services); and

i. a prior relationship between the client and the victim(s) which might help to explain the offense.

12. In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case could be damaging in and of itself or will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

13. Trial counsel should determine at the earliest possible time what aggravating circumstances the prosecution will rely upon in the penalty phase, any adjudicated or nonadjudicated wrongful acts the prosecution intends to prove and the nature and scope of any victim impact evidence the prosecution may present. Counsel at all stages of the case should object to any non-compliance with the rules of discovery and applicable case law in this respect and challenge the adequacy of those rules.

14. Counsel at all stages of the case should carefully consider whether all or part of the evidence the state may seek to call in the penalty phase may appropriately be challenged as improper, unduly prejudicial, misleading or not legally admissible. Counsel should challenge the admissibility of evidence brought in support of an aggravating circumstance that cannot legally be established in the circumstances of the case. Counsel should investigate and present evidence that specifically undermines or mitigates the aggravating circumstances and any other adverse evidence to be presented by the prosecution.

15. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

a. carefully consider:

i. what legal challenges may appropriately be made to the interview or the conditions surrounding it, and

ii. the legal and strategic issues implicated by the client's co-operation or non-cooperation;

b. ensure that the client understands the significance of any statements made during such an interview, including the possible impact on the sentence and later potential proceedings (such as appeal, subsequent retrial or resentencing); and

c. attend the interview, unless prevented by court order.

16. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not a suitable punishment for their particular client.

17. Counsel should make an opening statement.

18. In closing argument, counsel should be specific to the client and should, after outlining the compelling mitigating evidence, explain to the jury the significance of the mitigation presented. Counsel's closing argument should be more than a general attack on capital punishment and should not minimize the jury's verdict. Counsel should never ask, instruct, or give permission to the jury to return a death sentence, but rather should appeal to the jury for, and provide reasons for, a life sentence. Counsel's closing argument should not be contradictory. Counsel should not demean, disparage, be hostile towards, or make inappropriate comparisons regarding the client.

19. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:75 (January 2015).

§1917. Performance Standard 8: Post-Verdict Motions and Formal Sentencing

A. Motion for a New Trial and Other Post-Verdict Motions

1. Counsel should be familiar with the procedures and availability of motions for new trial, for arrest of judgment and for a post-verdict judgment of acquittal, including the time period for filing such motions, the formal requirements of each motion, the evidentiary rules applicable to each motion and the grounds that can be raised.

2. A motion for new trial should be filed in each case where a death verdict is returned by the jury. A motion in arrest of judgment or for a post-verdict judgment of acquittal should be filed in each case in which there exists a colorable basis for the relief sought to be granted.

3. In preparing the motion for new trial, counsel should conduct an intensive and thorough investigation designed to identify and develop: evidence of prejudice arising from any adverse rulings of the trial court; evidence not discovered during the trial that would likely have changed the verdict at either guilt or penalty phase; evidence of prejudicial error or defect not discovered before the verdict or judgment; and, evidence that would otherwise support an argument that the ends of justice would be served by the granting of a new trial.

4. Counsel should utilize all of the investigative tools described in these standards in conducting the investigation, including the use of fact investigators, mitigation specialists, experts, record requests, discovery requests, compulsory process and motions practice.

5. Recognizing that the post-verdict litigation represents a critical stage of proceedings that requires extensive investigation and development of potentially dispositive claims:

a. counsel should seek a postponement of formal sentencing for a sufficient period to allow adequate investigation and development of the motion for new trial or other post-verdict motions; and

b. counsel should seek additional resources sufficient to allow adequate investigation and development of the motion for new trial or other post-verdict motions.

6. In preparing and presenting claims in post-verdict motions, counsel should have particular regard to the need to fully plead the claims and their factual basis in a manner that will preserve the claims for subsequent review. Counsel should request an evidentiary hearing on the motion for new trial in order to present new evidence and preserve claims for appeal.

7. Counsel should prepare post-verdict motions urging that the death penalty is not a legally permissible penalty in the circumstances of the case, including that the death penalty would be constitutionally excessive, where such an arguments are available under existing law, or under a good faith argument for the extension, modification, or reversal of existing law.

8. Counsel should review the court record and ensure that it is complete and that matters relevant to any future review of the case are contained in the record including, for instance, race and gender of jurors in the venire, juror questionnaires, jury questions during deliberations, and all defense proffers appropriate to preserve any defense objections for review.

9. Following formal sentencing, counsel shall continue to conduct an intensive investigation designed to identify and develop evidence not discovered during the trial that would likely have changed the verdict at either guilt or penalty phase in order that any available motion for new trial may be filed within one year of the verdict or judgment of the trial court.

B. Preparation for Formal Sentencing, the Sentence Investigation Report and the Uniform Capital Sentencing Report

1. In preparing for sentencing, counsel should:

a. inform the client of the sentencing procedure, its consequences and the next steps in the client's case, including any expected change in the client's representation;

b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

c. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any statement may have upon the sentence to be imposed, any appeal or review, subsequent retrial or trial on other offenses;

d. become familiar with the procedures governing preparation, submission, and verification of the sentence investigation report and uniform capital sentencing report. In addition, counsel should:

i. consider providing to the report preparer information favorable to the client;

ii. consider whether the client should speak with the person preparing the report; if the decision is made that the client not speak to the report preparer, the client should be advised to exercise his rights to silence and the presence of counsel and the report preparer should be advised that the client is asserting his right not to participate in an interview. If the determination is made for the client to speak to the report preparer, counsel should discuss the interview in advance with the client and attend the interview;

iii. obtain a copy of the sentence investigation report and uniform capital sentencing report, once completed. Review the completed reports and discuss their contents with the client;

iv. file a written opposition to the factual contents of the reports where appropriate and seek a contradictory hearing.

C. Obligations of Counsel at Sentencing Hearing and Following Sentencing

1. Understanding that the formal imposition of a death sentence following a jury's death verdict is neither automatic, nor inevitable, counsel should actively advocate for a disposition other than the imposition of a death sentence. Such advocacy should include presenting to the court evidence and argument in favor of any categorical bar to the imposition of the death penalty and in support of an argument that the death penalty, in the circumstances of the particular case, is unconstitutionally excessive. Counsel's presentation should not be limited to existing law but should include all good faith arguments for an extension, modification or reversal of existing law.

2. Following the imposition of a death sentence, counsel should prepare and file a motionfor reconsideration of sentence.

3. Upon denial of a motion for reconsideration, counsel should timely file a motion for appeal, including a comprehensive request for transcription of the proceedings and designation of the record as follows:

a. the minutes of all of the proceedings connected with the case;

b. the indictment and any and all proceedings concerning the appointment and/or selection of the grand jury;

c. the transcript of arraignment;

d. the transcript of all pre-trial proceedings regardless of whether defense counsel and the defendant were present;

e. the transcript of any proceeding in which allotment of the case occurred;

f. the transcript of any joint proceedings held with another defendant(s);

g. the transcript of the entirety of voir dire, including the transcript of any communication made by the judge or the court staff whether within or outside the presence of defense counsel;

h. the transcript of all bench conferences, in chambers hearings or charge conferences;

i. the transcript of all argument and instruction;

j. the transcript of all testimony, including testimony at the penalty phase of the trial;

k. any and all exhibits introduced in connection with the case;

l. the jury questionnaires, verdict forms, polling slips, and verdicts imposed in the case.

4. In the period following the imposition of a sentence of death and the lodging of the appellate record, counsel should continue to actively represent the client's interests, including investigation and development of arguments relevant to a post-sentencing motion for new trial or defendant's sentence review memorandum. Counsel should take action to preserve the client's interests in his appeal, state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of appellate counsel.

5. Where appropriate, counsel should timely file a post-sentencing motion for new trial.

6. Counsel shall continue to represent the client until successor counsel assumes responsibility for the representation. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to appellate and post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:86 (January 2015).

§1919. Performance Standard 9: Direct Appeal

A. Duties of Appellate Counsel

1. Appellate counsel should comply with the capital guidelines, and these performance standards, except where clearly inapplicable to the representation of the client during the period of direct appeal, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Appellate counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Appellate counsel should monitor and remain informed of legal developments that may be relevant to the persuasive presentation of claims on direct appeal and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in federal habeas corpus proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. When identifying potential conflicts, appellate counsel should have particular regard to areas of potential conflict that may arise at this stage of proceedings, including:

a. when the defendant was represented at the trial level by appellate counsel or by an attorney in the same law office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, or it appears to appellate counsel that trial counsel provided ineffective representation;

b. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; and

c. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

5. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of the appeal, and counsel should encourage the client to participate in the appellate process.

6. Counsel shall consult with the client on the matters to be raised on appeal and give genuine consideration to any issue the client wishes to raise on appeal. What claims to raise on appeal, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

7. Appellate counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

8. Appellate counsel should obtain and review all prior counsels' file(s). Appellate counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

9. Appellate counsel should ensure that the record on appeal is complete. If any item is necessary to appellate review but is not included in the record, it is appellate counsel's responsibility to file a motion to supplement the record and to seek to have the briefing schedule stayed pending completion of the record.

10. Appellate counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Appellate counsel should consider whether any potential off-record matters may have an impact on how the appeal is pursued, and what kind of an investigation of the matter is warranted.

11. Appellate counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. If an error warranting relief has not yet been presented, Counsel should present it and request error patent review.

12. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied in the state appellate courts, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Counsel should present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's direct appeal open pending the determination of the other case.

13. Petitions and briefs shall conform to all rules of court and shall have a professional appearance, shall advance argument and cite legal authority in support of each contention and shall conform to Blue Book rules of citation. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims,

particularly any applicable decision of the United States Supreme Court.

14. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument. All arguments on assignments of error should include references by page number, or by any more precise method of location, to the place(s) in the transcript which contains the alleged error.

15. Counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice. If appropriate, counsel should move for the remand of the matter and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error or argument for excessiveness that is not adequately supported by the record.

16. Where counsel is considering seeking a remand for further hearing, counsel should undertake a full factual investigation of the issue for which the remand would be sought so that the decision as to whether to seek remand may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek remand for further hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if the case is remanded for further hearing.

17. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead appellate counsel, at which the issues raised in the case and the defense theory on appeal can be discussed. the issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

18. Counsel should complete a full review of the records of relevant proceedings and trial counsels' files prior to completing a draft of the brief. Lead counsel shall adopt a procedure for screening the brief, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead appellate counsel.

19. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the brief, the review of the brief and the finalization of the brief. If appellate counsel is unable to prepare the brief within the existing briefing schedule in a manner consistent with these standards and with high quality appellate representation, it is counsel's responsibility to file a motion to extend the briefing schedule.

20. Counsel shall be diligent in expediting the timely submission of the appeal and shall take all steps necessary to reduce delays and time necessary for the processing of appeals which adversely affect the client.

21. Where counsel is unable to provide high quality representation in appellate proceedings in a particular case, counsel must bring this deficiency to the attention of the capital case supervisor and the capital case coordinator. If the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

22. Following the filing of appellee's brief and before filing a reply brief, a second case review meeting shall be conducted to discuss the defense theory on appeal in light of the issues raised in the original brief, appellee's brief and the issues to be addressed in reply and at oral argument.

23. Counsel should, no less than two weeks prior to oral argument, where possible, file a reply brief rebutting legal and factual arguments made by the state. The reply brief should not simply repeat the contents of the original brief but should respond directly to the contentions of the state and any issues arising from the state's brief. Where appropriate, counsel should file a supplemental brief on the merits, seeking leave to do so if the case has already been submitted.

24. Counsel should prepare and timely file a sentence review memorandum in each case. The sentence review memorandum shall address itself to the state's sentence review memorandum and to the question of whether the sentence is excessive, having regard to: the influence of passion, prejudice, or other arbitrary factors; whether the evidence supports the jury's finding of a statutory aggravating circumstance; and whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The sentence review memorandum need not be limited to the matters contained in the record and shall furnish additional information relevant to the court's considerations under La. C.Cr.P. art. 905.9 and Supreme Court Rule XXVIII based upon the results of investigation undertaken pursuant to performance standard 9(25).

25. Counsel should undertake a detailed and intensive investigation of the matters relevant to the sentence review memorandum. Counsel shall not rely upon the contents of the state's sentence review memorandum without confirming the accuracy of that memorandum. The investigation should be commenced as soon as practicable after counsel is assigned to the case. Where additional favorable information is developed, counsel should seek a remand of the matter for the development of facts relating to whether the sentence is excessive.

26. Counsel should promptly review the uniform capital sentence report for accuracy and completeness. Where a response to the uniform capital sentence report has not previously been filed in the case, or where the response was incomplete or inaccurate, counsel should prepare and file an opposition to the report in accordance with these standards.

27. Counsel shall promptly inform the client of the date, time and place scheduled for oral argument of the appeal as soon as counsel receives notice thereof from the appellate court. Counsel shall not waive oral argument.

28. To prepare for oral argument, counsel should review the record and the briefs of the parties, and should

update legal research. If binding dispositive or contrary authority has been published since the filing of the brief, counsel shall disclose the information to the court. Counsel should be prepared to answer questions propounded by the court. In particular, counsel should be prepared to address whether and where the questions presented were preserved in the record, the applicable standards of review and the prejudice associated with the errors alleged.

29. Lead counsel shall adopt procedures, including at least two moot court arguments, to assist counsel in preparing to present argument. The moot court shall include at least one attorney qualified as lead appellate counsel who was not involved in drafting the brief. The moot will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the moot should be conducted independently of the case review.

30. Counsel presenting oral argument should be the person best qualified to present oral argument taking into account experience, the complexity of the case and time to prepare. That person will ordinarily be lead counsel. However, after consultation with the case supervisor and defense team, lead counsel may designate other counsel to present argument, including outside counsel.

31. Where pertinent and significant authorities come to counsel's attention following oral argument, counsel should bring the authorities to the attention to the court by letter or, where appropriate, should seek leave to file a supplemental brief.

32. Counsel shall promptly inform the client of any decision of the appellate court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision. If the case has been returned to a lower court on remand, counsel should continue in his or her representation (unless and until other counsel has been assigned and formally enrolled) providing any necessary briefing to the court to continue to advocate for the client.

33. Counsel shall promptly inform the capital case coordinator of the disposition in any capital appeal case.

34. Counsel shall timely prepare and file a motion for rehearing, raising all arguments for which a meritorious motion for rehearing can be advanced. Counsel should have particular regard to any changes or developments in the law since the case had been submitted and any errors of fact or law appearing in the decision that may be corrected by reference to the record.

35. The duties of the counsel representing the client on direct appeal ordinarily include filing a petition for certiorari in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify the capital coordinator and the state public defender. In developing, drafting and filing a petition for certiorari, appellate counsel should consult with counsel with particular expertise and experience in litigating applications for certiorari before the United States Supreme Court.

36. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

37. Appellate counsel should be familiar with the procedure for setting execution dates and providing notice of them. Counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution. If an execution date is set, counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

38. In the event that the client's appeal to the Louisiana Supreme Court and application for certiorari to the United States Supreme Court are unsuccessful, appellate counsel shall advise the client of: his or her right to seek state post-conviction relief and federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; the procedure and effect of filing of a petition for post-conviction relief in the state trial court to raise new claims and to exhaust any federal constitutional issues for federal habeas review; and, the procedure for assignment of counsel to represent the client in post-conviction proceedings.

39. Appellate counsel shall, with the client's consent, continue to represent the client for the limited purpose of preserving the client's interests in his state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of post-conviction counsel. Counsel shall carefully explain the limited scope of this representation to the client and provide advice of this limited scope in writing when obtaining the client's consent.

40. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

41. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, capital case direct appeal review form, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:87 (January 2015).

§1921. Performance Standard 10: State Post-Conviction and Clemency

A. Duties of Post-Conviction Counsel

1. Post-conviction counsel should comply with the capital guidelines, and these performance standards, except where clearly inapplicable to the representation of the client in the post-conviction period of the case, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Post-conviction counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Post-conviction counsel should monitor and remain informed of legal developments that may be relevant to the persuasive representation of claims in state post-conviction proceedings, in federal habeas corpus proceedings and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in state and federal proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of post-conviction and federal habeas corpus proceedings, and counsel should encourage the client to participate in the collateral review process.

5. Counsel shall consult with the client on the matters to be raised in any post-conviction petition or federal application for habeas corpus and give genuine consideration to any issue the client wishes to raise. What claims to raise, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a *pro se* brief.

6. Post-conviction counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or Supreme Court, and the files in any other related or prior proceedings in the cause.

7. Post-conviction counsel should obtain and review all prior counsels' file(s). Post-conviction counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

8. Post-conviction counsel should ensure that the record of proceedings available for review is complete. If any item is necessary to post-conviction review but is not included in the record of proceedings, it is post-conviction counsel's responsibility to ensure that the record available for review is supplemented.

9. Post-conviction counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Post-conviction counsel should consider whether any potential off-record matters should have an impact on how post-conviction review is pursued, and what kind of an investigation of the matter is warranted.

10. Post-conviction counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. Counsel should undertake a high quality, independent, exhaustive investigation and should not assume that investigation of issues by prior counsel has been complete or adequate.

11. The investigation and litigation of claims should encompass all arguably available claims for relief, including those based upon the grounds that:

a. the defendant is in custody or the sentence was imposed in violation of the Constitution or laws or treaties of the United States;

b. the execution of the defendant would violate the Constitution, laws or treaties of the United States or the Constitution or laws of the state of Louisiana;

c. the conviction was obtained in violation of the constitution of the state of Louisiana;

d. the sentence was obtained in violation of the constitution of the state of Louisiana or is otherwise an illegal sentence;

e. the court exceeded its jurisdiction;

f. the conviction or sentence subjected the defendant to double jeopardy;

g. the limitations on the institution of prosecution had expired;

h. the statute creating the offense for which the defendant was convicted and sentenced is unconstitutional;

i. the conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana;

j. the results of DNA testing performed pursuant to an application granted under La. C. Cr. P. art. 926.1 proves that the petitioner is factually innocent of the crime for which he was convicted; or

k. the defendant is otherwise shown to be factually innocent of the crime for which he was convicted or not eligible for the death penalty.

12. In conducting the investigation, counsel should have particular regard to the possibility that claims for relief may arise from matters not previously fully investigated or litigated, including:

a. the possibility that the state failed to turn over evidence favorable to the defendant and material to his guilt or punishment;

b. the possibility that the state knowingly used false testimony to secure the conviction or sentence;

c. the possibility that the client received ineffective assistance of counsel as to either guilt or penalty in the course of his representation in the trial court or on appeal;

d. the possibility that the jury's verdict is tainted by issues such as jury misconduct, improper separation of the jury, and false answers on voir dire examination; and,

e. the possibility that the client is innocent of the offense charged or not eligible for the death penalty.

13. In investigating the possibility that the client received ineffective assistance of counsel, post-conviction counsel must review both the record in the case and also conduct a thorough investigation of the facts and circumstances beyond the record in order to determine whether a claim exists that counsel's performance was deficient. As these Standards are intended to reflect accepted minimum standards for performance in capital cases, in determining the scope of the investigation to be conducted, post-conviction counsel shall have regard to these Standards as they describe the responsibilities of trial and appellate counsel. Post-conviction counsel shall conduct a sufficiently thorough investigation to determine either that prior counsel's responsibilities were met or to determine the extent of any prejudice arising from the failure to meet those responsibilities.

14. In investigating and developing claims of ineffective assistance of counsel or the suppression of favorable evidence, counsel shall be conscious that evidence will be assessed for its cumulative impact and so should not limit the investigation to those matters that might, in and of themselves, justify relief. Instead, the investigation should extend to those matters which, in combination with others, may justify relief.

15. In investigating, preparing and submitting a petition, counsel should seek such pre-filing discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to a high quality, independent, exhaustive investigation. Counsel should investigate the possibility of and, where appropriate, file an application for DNA testing pursuant to La. C.Cr.P. art. 926.1.

16. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's post-conviction proceedings open pending the determination of the other case.

17. Petitions and supporting memoranda shall conform to all rules of court, including Supreme Court Rule XXVII and shall have a professional appearance, conform to acceptable rules of grammar, be free from typographical errors and misspellings, shall advance argument and cite legal authority in support of each contention. Counsel shall utilize out-of-state and federal authority in support of positions when no local authority exists or local authority is contrary to the weight of recent decisions from other jurisdictions. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

18. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies.

19. The post-conviction petition should clearly allege a factual basis for each claim which, if established, would entitle the petitioner to relief and clearly allege all facts supporting the claims in the petition. Counsel shall include with the petition all documents and exhibits that would establish or support the factual basis of the petitioner's claims, including but not limited to court records, transcripts, depositions, admissions of fact, affidavits, statements, reports and other records. In determining the scope of the material to be presented in state court, counsel shall have regard to the likelihood that federal review will be limited to the material presented in state court and so should not refrain from presenting any relevant material unless there are strong strategic reasons to do so.

20. Where counsel raises a claim that has previously been fully litigated in earlier appeal proceedings in the case, counsel shall fully investigate, prepare and submit an argument that the claim is nevertheless eligible for consideration in the interests of justice.

21. Where counsel raises a claim that was not raised in the proceedings leading to conviction or sentence, was not pursued on appeal or was not included in a prior post-conviction petition, counsel shall fully investigate, prepare and submit a claim that the failure to previously raise the claim is excusable.

22. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead post-conviction counsel, at which the issues raised in the case and the defense theory in post-conviction can be discussed. The issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

23. Counsel should complete a full review of the records of relevant proceedings, trial counsels' files and the fruits of the post-conviction investigation prior to completing a draft of the petition. Lead counsel shall adopt a procedure for screening the petition, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead post-conviction counsel.

24. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the petition, the review of the petition and the finalization of the petition. If post-conviction counsel is unable to complete the post-conviction investigation and prepare the petition within the existing briefing schedule in a manner consistent with these standards and with high quality post-conviction representation, it is counsel's responsibility to file a motion to extend the filing deadline.

25. Counsel shall be diligent in expediting the timely submission of the post-conviction petition and shall take all steps necessary to reduce delays and time necessary for the processing of petitions which adversely affect the client.

26. Where counsel is unable to provide high quality representation in post-conviction proceedings in a particular case, counsel must promptly bring this deficiency to the attention of the capital case supervisor and the capital case coordinator. If the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

27. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

28. Where the state files procedural objections or an answer on the merits, counsel should file a response rebutting legal and factual arguments made by the state. The response brief should not simply repeat the contents of the original petition but should respond directly to the contentions of the state and any issues arising from the state's filing. Where appropriate, counsel should file a supplemental petition or briefing, seeking leave to do so if required.

29. Counsel should seek such discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to the full development and presentation of all claims in the petition and should document the denial of any such attempts to secure facts in support of possible claims.

30. Counsel should request an evidentiary hearing for all claims in which the state does not clearly admit the factual allegations contained in the petition and seek to prove by admissible evidence those factual allegations that support or establish the client's claims for relief.

31. Where counsel is considering seeking an evidentiary hearing, counsel should undertake a full factual investigation of the issue for which the hearing would be sought so that the decision as to whether to seek a hearing may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek an evidentiary hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if an evidentiary hearing is granted.

32. Following any evidentiary hearing, counsel should file supplemental briefing demonstrating the client's entitlement to relief based upon the petition filed and the evidence adduced at the hearing.

33. Counsel should timely make application for supervisory writs if the trial court dismisses the petition or otherwise denies relief on an application for post-conviction relief. Counsel should take great care to ensure that all writ applications comply with the requirements of the relevant rules of court and present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Counsel should ensure that an adequate record is created in the trial court to justify and encourage the exercise of the supervisory jurisdiction of the reviewing court. Counsel should respond to any state application for supervisory writs or appeal except where exceptional circumstances justify the choice not to respond.

34. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including advising the capital case supervisor of the situation and seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

35. Counsel shall promptly inform the client of the decision of the trial court and any reviewing court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision.

36. The duties of the counsel representing the client in state post-conviction proceedings include filing a petition for certiorari in the Supreme Court of the United States. If post-conviction counsel does not intend to file such a petition, he or she should immediately notify the capital coordinator and the state public defender.

37. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

38. Post-conviction counsel should be familiar with the procedure for setting execution dates and providing notice of them. Counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution. If an execution date is set, counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

39. In the event that the client's state post-conviction application is unsuccessful, post-conviction counsel shall advise the client of: his right to seek federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; and, the procedure for assignment of counsel to represent the client in federal habeas corpus proceedings. Having regard to tolling, counsel shall advise the client of the actual period of time that will be remaining for filing a federal petition upon finalization of the state post-conviction proceedings. Counsel shall provide such advice a sufficient period prior to the finalization of state post-conviction proceedings to allow the client to take adequate steps to protect his rights to federal review.

40. Counsel shall promptly inform the capital case coordinator of the disposition in any capital post-conviction case.

41. Counsel shall take all necessary steps to preserve the client's right to federal review, including ensuring that the client is not time barred from seeking relief. Post-conviction counsel shall be responsible for protecting the client's interests in this regard, including ensuring that a federal petition is filed while state post-conviction proceedings remain pending where the time remaining for

filing a federal petition following finalization of the state post-conviction proceedings will be inadequate to allow a timely filing at that time.

42. State post-conviction counsel may continue to represent the client in his federal habeas corpus proceedings only with the consent of the capital case coordinator and the informed consent of the client. Adequate representation in federal habeas corpus proceedings will include an investigation of whether state post-conviction counsel provided ineffective assistance in failing to adequately raise a meritorious claim of ineffective assistance of trial or appellate counsel. Just as trial counsel is poorly placed to investigate or litigate his or her own ineffectiveness, state post-conviction counsel may be similarly limited. In these circumstances, the capital case coordinator should not ordinarily consent to continuing representation by state post-conviction counsel in the absence of: informed consent from the client obtained through independent counsel; and, the assignment to the defense team of at least one attorney qualified and experienced in federal habeas corpus proceedings in capital cases who was not involved in the preparation and presentation of the state post-conviction petition.

43. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

44. Counsel should closely monitor the client's competence in post-conviction proceedings, having regard to the requirement that the client be sufficiently competent to be lawfully executed and should investigate and litigate this issue where it is possible that the client does not meet the necessary degree of competence.

B. Duties of Clemency Counsel

1. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.

2. Clemency counsel should conduct an investigation of matters relevant to clemency consistent with these standards and should not assume that the investigation conducted by prior counsel was complete or adequate.

3. Clemency counsel should ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction.

4. Clemency counsel should ensure that the process governing consideration of the client's application is substantively and procedurally just, and, if it is not, should seek appropriate redress.

5. Clemency counsel should fully discharge the ongoing obligations imposed by the guidelines, and standards including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and

d. continue an aggressive investigation of all aspects of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:90 (January 2015).

§1923. Performance Standard 11: Supervision, Review and Consultation

A. Supervision of the Defense Team

1. Primary responsibility for the supervision of the defense team and the team's compliance with these standards and the guidelines rests with lead counsel. Lead counsel shall establish a system for communication, feedback and supervision of the defense team that shall ensure that the team provides high quality representation and that any deficiencies in compliance with the guidelines or standards are promptly identified and remedied. Lead counsel should ensure that all team members are aware of their obligations under the guidelines and performance standards.

2. Primary responsibility for the supervision of experts rests with lead counsel, though this responsibility may be delegated to other counsel who are more directly responsible for working with a particular expert. Counsel supervising an expert shall ensure that appropriate funding is secured and maintained for the expert's services, that the expert performs the requested services in a timely fashion and to a high quality and that the expert's services are promptly invoiced and paid. By submitting an expert's invoice to the office of the state defender for payment, counsel certifies that the work performed was reasonably necessary and that it was completed to an appropriate standard.

3. The case supervisor is responsible for monitoring the correct, effective and appropriate implementation of the capital guidelines and performance standards in each case. In contrast to the responsibilities of lead counsel to make strategic decisions in the case, this is an administrative level of supervision designed to ensure that the team is assembled and is functioning in accordance with the guidelines and standards. The case supervisor shall be certified as lead counsel and shall have a comprehensive knowledge of the requirements of the capital guidelines and performance standards. The case supervisor shall not be a staff member in the same office as members of the defense team or district defender of the district responsible for the case.

4. The case supervisor for each case shall meet with the defense team no less than once every three months and provide a quarterly report to the capital case coordinator in the form provided, advising of the extent to which the team and its representation are in compliance with the guidelines and standards.

5. The case supervisor is a lawyer engaged to consult with counsel on the defense team within lawyer-client privilege to assist in ensuring that each client is receiving high quality representation in compliance with the capital guidelines and performance standards. The case supervisor does not, by virtue of being case supervisor, have the authority to act on behalf of the defendant or to direct members of the defense team to take any action or refrain from taking any action. The case supervisor may make recommendations to the defense team, resolve workload

questions pursuant to guideline §919 and report non-compliance with the guidelines to the district public defender and state public defender. All members of the defense team shall cooperate with the case supervisor and provide access to the case file and case theory documents as requested.

6. The state defender, district defender or director of a defender organization having an employment or contractual relationship with counsel on a defense team may exercise such supervisory and regulatory authority as is consistent with the *Louisiana Rules of Professional Conduct* and provided for within that employment or contractual relationship. However, it shall remain at all times the responsibility of individual counsel to ensure that representation is provided in accordance with the capital guidelines and performance standards.

7. The capital case coordinator shall have responsibility for monitoring the performance of counsel and defender organizations providing capital representation in the state and reporting to the state defender. In performing this supervisory role, the capital case coordinator shall have particular regard to: the capital guidelines and performance standards; applications for certification and re-certification of counsel; quarterly reports submitted by case supervisors; requests for expert assistance by counsel; briefings from counsel following the closure of cases; findings and recommendations of case review committees formed under guideline §921(C); case observation; and other reliable sources of information.

8. Where the capital case coordinator becomes aware that a defense team is not providing representation consistent with these guidelines and associated performance standards, the capital case coordinator, shall take necessary action to protect the interests of the attorney's current and potential clients.

B. Case Review Meetings, Consulting Counsel and Practice Advisories

1. In order to ensure high quality legal representation in each case, identify any problems in the case in a timely fashion, develop the knowledge and skill of capital defenders and build the capacity of the indigent capital defense community in this state, representation in each case should include the use of case review meetings.

2. Case review meetings are meetings facilitated by a professional external to the team. Case review meetings will include the whole defense team, the facilitator and a diverse group of appropriately qualified professionals external to the team (both lawyers and non-lawyers). The case review meeting will involve a systematic and comprehensive review of the case and the representation appropriate to the stage of proceedings and preparation of the case. The case review meeting will involve a structured dialogue and critical thinking designed to empower the defense team and is not designed as a mechanism for assessing the performance of the defense team or its members. The case review meeting will produce a list of concrete commitments from the defense team arising from the discussions in the case review meeting.

3. The documents prepared for each case review meeting, the minutes of the case review meeting and the commitments arising from each case review meeting shall be maintained by counsel in the relevant case file and shall be available for review by the case supervisor.

4. At each stage of representation in a case (trial, appellate and post-conviction) there should ordinarily be a minimum of three case review meetings conducted. Case review meetings will ordinarily be conducted: early in the assignment of the case (to ensure the team has been properly assembled, is adequately resourced and has an appropriate plan for advancing representation in the case); once substantial work on the case has been commenced (to ensure that the work is proceeding appropriately, to provide feedback on the defense theory, to provide input on investigative and litigation planning and to respond to particular issues that have developed in the case); and, as the case is approaching the culmination of the work at the particular stage of representation (to ensure that the case is ready to proceed, to provide feedback on the planned execution of the case theory that has been developed and to troubleshoot any final issues that have arisen).

5. Facilitators for case reviews conducted pursuant to these standards shall be approved by the capital case coordinator.

6. In addition to counsel assigned as a part of the defense team and the case supervisor, counsel should consult with and take advantage of the skills and experience of other certified capital defenders. The state defender may require as a condition of provisional certification that counsel consult with other counsel designated by the state defender. Counsel may consult on a specific issue or issues, or may consult in an ongoing fashion with the defense team.

7. Counsel consulting on a case is acting within lawyer-client privilege and should maintain confidentiality accordingly.

8. Counsel consulting with a defense team should ensure that their work as a consulting counsel and any advice provided is fully documented. In order to ensure the accuracy of any advice provided, consulting counsel should seek to reduce that advice to writing, including a notation of the issue presented and the factual or legal assumptions that underpin the advice. This requirement is not intended to require consulting counsel to provide briefing on the basis of any advice or otherwise increase the scope of the responsibility of counsel consulting on the case but instead to ensure that such advice as is given is reduced to writing to avoid the miscommunications inherent in oral communication.

9. In order to assist capital defenders in the performance of their duties, the capital case coordinator may from time to time issue practice advisories. These practice advisories shall not have the status or effect of rules promulgated by the Louisiana Public Defender Board. The practice advisories represent the opinion of the office of the state public defender as to best practices and are intended to provide a timely and flexible way to provide expert advice to the field on specific or emerging areas in capital defense.

10. Before a practice advisory may be issued, it must be approved by an advisory committee of no less than four members including counsel actively engaged in capital defense at trial, appellate and post-conviction level. No practice advisory shall be issued without the approval of the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:94 (January 2015).

James R. Dixon, Jr.
State Public Defender

1501#070

RULE

Department of Health and Hospitals
Board of Examiners of Nursing Facility Administrators

Preceptor Update, Continuing Education, and Fee Schedule
(LAC 46:XLIX.703, 903, and 1201)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2501 et seq., the Louisiana Board of Examiners of Nursing Facility Administrators has amended LAC 46:XLIX.703, 903, and 1201. The Rule increases the number of hours of approved continuing education credits that must be completed annually from 15 to 18 and limits the maximum number of those hours from approved online courses to 9. The Rule also increases specific fees to provide sufficient revenues for increases in the operating costs of the Board of Examiners.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIX. Nursing Facility Administrators

Chapter 7. Administrator-in-Training (AIT)

§703. Preceptor

A. - E. …

F. Preceptor Update. Preceptors must undertake an approved training course every three years sponsored by the board in order to maintain this certification. The training qualifies as required continuing education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1023 (August 1993), LR 37:593 (February 2011), LR 41:96 (January 2015).

Chapter 9. Continuing Education

§903. Requirements

A. Number of Hours. Each licensee must complete a minimum of 18 hours of approved continuing education, or the portion thereof as designated by the board during the 12-month period preceding the date of re-registration of licenses.

1. A maximum of 9 hours of approved online continuing education may be credited towards the total 18 hours.

B. - C.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 11:864 (September 1985), LR 13:240 (April 1987), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1023 (August 1993), repromulgated LR 19:1322 (October 1993), amended LR 37:593 (February 2011), LR 39:1046 (April 2013), LR 41:96 (January 2015).

Chapter 12. Fees and Assessments

§1201. Fee Schedule

A. The board hereby establishes the following fees and costs to be imposed for the purpose of implementing and enforcing the provisions of this Part.

Administrator address labels/page	$8
Annual Conditional Registration Fee	$210
Annual Registration Fee	$395
Application Packet	$100
Certification of document as true copy	$10
CNA/DSW Card	$13
Continuing Education Provider (annually)	$600
Delinquent fee	$250
Directory of Administrators	$15
Failure to maintain current information	$80
Handling and mailing per page	$2
Initial Registration Fee	$395
Minimum Licensure Standards Book	$15
NFA Application Fee	$600
NFA Replacement Card (with photo)	$17
NSF Fee	$50
Photocopies of document/page	$0.50
Reciprocity Fee (to another state)	$50
Reciprocity Fee (to Louisiana)	$125
Replace License Card	$12
Replace License (original)	$50
Replace Registration Certificate or 2nd copy	$25
Request for CEU Approval (applicant)	$50
Request for CEU Approval (vendor)	$75
Seminars (per hour of instruction)	$50
State Exam Fee	$120
State Exam Retake Fee	$150

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 37:596 (February 2011), amended LR 39:1047 (April 2013), LR 41:96 (January 2015).

Mark A. Hebert
Executive Director

1501#002

RULE

Department of Health and Hospitals
Board of Examiners of Nursing Facility Administrators

Refusal, Suspension, and Revocation of License
(LAC 46:XLIX.1105)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2501 et seq., the Louisiana Board of Examiners of Nursing Facility Administrators has amended

LAC 46:XLIX.1105 relative to the administration of nursing facility administrators and their licensure to amend the refusal, suspension and revocation of license policy to include administrators-in-training, to add an additional violation complaint category, and to expand the disciplinary action options available to the board.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIX. Nursing Facility Administrators
Chapter 11. Licenses
§1105. Refusal, Suspension and Revocation of License

A. Board Review; Notice of Hearing

1. Upon the determination that a licensee or administrator-in-training applicant has violated one or more provisions of this Part the board may suspend, revoke, or refuse to issue a license or certificate of registration for nursing home administrator found in violation of this Part. In addition, the board may place a licensed administrator on probation, and/or in remedial training, and/or officially reprimand or otherwise discipline a licensee or administrator-in-training applicant, including but not limited to the imposition of a fine as set forth in this Part.

2. Once a complaint under the categories that follow has been received by the board, the board shall provide licensee or administrator-in-training applicant with adequate notice and an opportunity to respond as provided in Chapter 13 of this Part.

a. Category One

i. - x. ...

xi. has used alcohol, narcotics, or other drugs in a manner that interferes with the actual ability to practice as a nursing facility administrator or train as a administrator-in-training applicant.

b. - e. ...

3. Disciplinary Action

a. Category One. A fine of not less than $500 nor more than $2,000, and/or probation not to exceed three years, and/or suspension of license for not less than 30 days nor more than three years, denial of licensure and/or remedial training, counseling or revocation of license.

A.3.a.i. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504, R.S. 37:2509 and R.S. 37:2510.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:461 (July 1983), LR 12:366 (June 1986), amended by Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 15:195 (March 1989), repealed and repromulgated LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:595 (February 2011), LR 39:1046 (April 2013), LR 41:97 (January 2015).

Mark A. Hebert
Executive Director

1501#001

RULE

Department of Health and Hospitals
Board of Pharmacy

Pharmacy Compounding (LAC 46:LIII.Chapter 25)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended Chapter 25, Prescriptions, Drugs and Devices, and more specifically, Subchapter C, Compounding of Drugs, of its rules. The Rule changes are intended to harmonize the board's rules on this topic with recently enacted federal legislation, the Drug Quality and Security Act of 2013.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 25. Prescriptions, Drugs, and Devices
Subchapter C. Compounding of Drugs
§2531. Purpose and Scope

A. Purpose. The rules of this Subchapter describe the requirements of minimum current good compounding practices for the preparation of drug formulations by Louisiana-licensed pharmacists, pharmacy interns, pharmacy technicians, and pharmacy technician candidates for dispensing and/or administration to patients.

B. Scope. These requirements are intended to apply to all compounded preparations, sterile and non-sterile, regardless of the location of the patient, e.g., home, hospital, nursing home, hospice, or practitioner's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2105 (October 2003), effective January 1, 2004, LR 41:97 (January 2015).

§2533. Definitions

A. As used in this Subchapter, the following terms shall have the meaning ascribed to them in this Section.

* * *

Preparation—a compounded drug dosage form or dietary supplement or a device to which a compounder has introduced a drug. This term will be used to describe compounded formulations.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2105 (October 2003), effective January 1, 2004, LR 41:97 (January 2015).

§2535. General Standards

A. Compounding Practices. Compounded medications may be prepared using prescription medications, over-the-counter medications, chemicals, compounds, or other components.

1. A pharmacy shall have written procedures as necessary for the compounding of drug preparations to assure that the finished preparations have the identity, strength, quality, and purity they are represented to possess.

2. All compounding activities shall be accomplished utilizing accepted pharmacy techniques, practices, and equipment, as well as the Federal Food, Drug and Cosmetic Act of 1938 as subsequently amended, most recently in November 2013 (FDCA), the 2014 edition of title 21 of the *Code of Federal Regulations* (CFR), and all relevant chapters of the 2014 edition of the United States Pharmacopeia-National Formulary (USP 37-NF 32).

a. The compounding of sterile preparations pursuant to the receipt of a patient-specific prescription shall comply with the provisions of section 503A of the FDCA and USP chapter 797.

b. The compounding of non-sterile preparations pursuant to the receipt of a patient-specific prescription shall comply with the provisions of section 503A of the FDCA and USP chapter 795.

c. The compounding of preparations for veterinary use shall comply with the provisions of section 530 of Title 21 of the CFR.

d. The compounding of positron emission tomography (PET) drugs shall comply with the provisions of section 212 of title 21 of the CFR.

3. Products or duplicates of products removed from the market for the purposes of safety shall not be used to compound prescriptions for human use.

B. Board Notification. An applicant or pharmacy permit holder who wishes to engage in the compounding of sterile preparations shall notify the board and shall receive approval from the board prior to beginning that practice.

C. Training and Education. All individuals compounding sterile preparations shall:

1. obtain practical and/or academic training in the compounding and dispensing of sterile preparations;

2. complete a minimum of one hour of Accreditation Council for Pharmacy Education (ACPE) accredited or board-approved continuing education, on an annual basis, related to sterile drug preparation, dispensing, and utilization;

3. use proper aseptic technique in compounding of all sterile preparations, as defined by the pharmacy practice site's policy and procedure manual;

4. qualify through an appropriate combination of specific training and experience to operate or manipulate any item of equipment, apparatus, or device to which such persons will be assigned to use to make and dispense sterile preparations; and

5. maintain in the pharmacy practice site a written record of initial and subsequent training and competency evaluations. The record shall contain the following minimum information:

a. name of the individual receiving the training/evaluation;

b. date of the training/evaluation;

c. general description of the topics covered;

d. signature of the individual receiving the training/evaluation; and

e. name and signature of the individual providing the training/evaluation.

D. Anticipated Use Preparations. The pharmacist shall label any excess compounded preparation so as to reference it to the formula used and the assigned lot number and estimated beyond use date based on the pharmacist's professional judgment and/or other appropriate testing or published data.

E. Compounding Commercial Products not Available. A pharmacy may prepare a copy of a commercial product when that product is not available as evidenced by either of the following:

1. products appearing on a website maintained by the federal Food and Drug Administration (FDA) and/or the American Society of Health-System Pharmacists (ASHP);

2. products temporarily unavailable from manufacturers, as documented by invoice or other communication from the distributor or manufacturer.

F. Labeling of Compounded Preparations

1. The labeling requirements of R.S. 37:1225, or its successor, as well as this Chapter, shall apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 23:1316 (October 1997), LR 29:2105 (October 2003), effective January 1, 2004, LR 41:97 (January 2015).

§2537. Requirements for Compounding Sterile Products

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2106 (October 2003), effective January 1, 2004, repealed LR 41:98 (January 2015).

Malcolm J. Broussard
Executive Director

1501#009

RULE

Department of Health and Hospitals
Board of Pharmacy

Prescriptions (LAC 46:LIII.2511)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §2511, Prescriptions of its rules. The Rule updates the requirements for prescription forms and to codify contemporary practice standards for the minimum data set for prescriptions.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 25. Prescriptions, Drugs, and Devices
Subchapter B. Prescriptions
§2511. Prescriptions

A. …

* * *

B. Requirements. A prescription shall contain the following data elements:

1. prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, the Drug Enforcement Administration (DEA) registration number;

2. patient's name, and if for a controlled substance, address;

3. date prescription issued by the prescriber;

4. name of drug or device, and if applicable, strength, and quantity to be dispensed;

5. directions for use;

6. signature of prescriber; and

7. refill instructions, if any. In the absence of refill instructions on the original prescription, the prescription shall not be refilled.

C. Written Prescriptions. A written prescription shall conform to the following format.

1. The prescription form shall be of a size not less than 4 inches by 5 inches, and shall bear a single printed signature line.

2. The prescription form shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and, if for a controlled substance, the Drug Enforcement Administration (DEA) registration number. In the event that multiple practitioners are identified on the prescription form, the authorizing prescriber's specific identity shall be clear and unambiguous. This identification may be indicated by any means, including but not limited to, a marked check box next to, or circling the authorizing prescriber's printed name.

3. No prescription form shall contain more than four prescription drug orders. Each prescription drug order recorded on the form shall provide the following:

a. check box labeled "Dispense as Written", or "DAW", or both; and

b. the number of refills, if any.

4. The prescription shall be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner on the date issued and in the same manner as he would sign a check or legal document (e.g., J. H. Smith or John H. Smith). Examples of invalid signatures include rubber stamps, signatures of anyone other than the prescriber, and computer generated signatures.

5. Facsimile Prescription

a. The receiving facsimile machine of a prescription transmitted by facsimile shall be located within the pharmacy department.

b. The prescription transmitted by facsimile shall be on a non-fading legible medium.

c. All requirements applicable to written prescriptions in this Subsection shall apply to facsimile prescriptions, except Subparagraph B.7.c.

6. Forms used by pharmacists to record telephoned or transferred prescriptions are exempt from the format requirements listed above.

7. Equivalent Drug Product Interchange

a. The pharmacist shall not select an equivalent drug product when the prescriber handwrites a mark in the check box labeled "Dispense as Written", or "DAW", or both, and personally handwrites his signature on a printed single signature line. Otherwise, the pharmacist may select an equivalent drug product provided the patient has been informed of, and has consented to, the proposed cost saving interchange.

b. In the event an authorized prescriber has indicated that an equivalent drug product interchange is prohibited by handwriting a mark in the check box labeled "Dispense as Written" or "DAW" or both, then a non-licensed, non-certified, or non-registered agent of the pharmacy shall not inquire as to a patient's desire for an equivalent drug product interchange.

c. For prescriptions reimbursable by Medicaid, the authorized prescriber may only prohibit equivalent drug product interchange by handwriting the words "brand necessary" or "brand medically necessary" on the face of the prescription order or on a sheet attached to the prescription order.

D. Oral Prescriptions

1. Upon receipt of an oral prescription from an authorized prescriber, the pharmacist or pharmacy intern or pharmacy technician shall reduce the order to a written form prior to dispensing the medication. As an alternative to recording such prescriptions on paper forms, a pharmacist may enter the prescription information directly into the pharmacy's dispensing information system. In the event a pharmacy intern or pharmacy technicians transcribes such a prescription, the supervising pharmacist shall initial or countersign the prescription form prior to processing the prescription.

2. The pharmacist shall not select an equivalent drug product when the authorized prescriber or his agent has verbally indicated a specific brand name drug or product is ordered.

3. The pharmacist may select an equivalent drug product if the authorized prescriber or his agent has given his approval to the equivalent drug product interchange. The patient shall be informed of, and consent to, the proposed cost saving interchange.

E. Electronic Prescriptions

1. The prescription shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and if for a controlled substance, DEA registration number.

2. The pharmacist shall not select an equivalent drug product when the prescriber indicates "Dispense as Written", "DAW" or "Brand Medically Necessary" and transmits his electronic signature. Otherwise, the pharmacist may select an equivalent drug product, provided the patient has been informed of, and consents to, the proposed cost saving interchange.

F. Exclusion. The provisions of this Section shall not apply to medical orders written for patients in facilities licensed by the Department of Health and Hospitals or its successor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2102 (October 2003), effective January 1, 2004, LR 41:98 (January 2015).

Malcolm J. Broussard
Executive Director

1501#010

RULE

Department of Health and Hospitals
Board of Pharmacy

Special Event Pharmacy Permit
(LAC 46:LIII.Chapter 24)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended Chapter 24, Limited Service Providers, of its rules by adding Subchapter B, Special Event Pharmacy Permit. The Rule is intended to authorize the issuance of a pharmacy permit to the sponsor of a special event, e.g., medical missions, to facilitate the dispensing of prescription medications to patients at the special event. The Rule establishes the general requirements and standards of practice for pharmacies operating with a special event pharmacy permit.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 24. Limited Service Providers
Subchapter A. Durable Medical Equipment
§2409. (Reserved)
Subchapter B. Special Event Pharmacy Permit
§2411. Special Event Pharmacy Permit

A. For good cause shown, the board may issue a special event pharmacy permit when the scope, degree, or type of pharmacy practice or service to be provided is of a special, limited, or unusual nature as compared to a regular pharmacy service. The permit to be issued shall be based on special conditions as requested by the applicant and imposed by the board in cases where certain requirements or standards of practice may be waived.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1223.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 41:100 (January 2015).

§2413. General Requirements

A. Authority and Limitation

1. A special event pharmacy permit shall authorize the permit holder to procure and possess prescription and non-prescription drugs and devices, and hold such items for immediate administration directly to a patient and/or dispense such items to a patient for later use upon the order of a practitioner with prescriptive authority.

2. In the absence of a Louisiana controlled dangerous substance (CDS) license, the holder of a special event pharmacy permit shall not procure or possess any controlled dangerous substances.

B. Licensing Procedure

1. A person or other entity desiring to obtain a special event pharmacy permit shall complete the application form supplied by the board and submit it with any required attachments and the application fee to the board.

2. The applicant shall provide a complete physical address reflecting the location where the applicant will hold the drugs and devices and engage in the activity for which the permit is acquired. The board shall not issue more than one permit for the same physical space.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fee.

4. A person or other entity who knowingly or intentionally submits a false or fraudulent application shall be deemed to have violated R.S. 37:1241(A)(2).

5. Once issued, the special event permit shall expire 30 days thereafter. No person or other entity shall operate a special event pharmacy with an expired permit; the continued operation of a special event pharmacy with an expired permit shall constitute a violation of R.S. 37:1241(A)(12). Upon written request to the board, and with the concurrence of the board's president and executive director, the expiration date of the special event pharmacy permit may be extended up to an additional 30 days. No special event pharmacy permit shall be valid for more than 60 days.

C. Maintenance of Permit

1. A special event pharmacy permit shall be valid only for the person or other entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a special event pharmacy permit be valid for any premises other than the physical location for which it is issued.

2. A duplicate or replacement permit shall be issued upon the written request of the permit holder and payment of the required fee. A duplicate or replacement permit shall not serve or be used as an additional or second permit.

D. Closure of Permit

1. At the conclusion of the special event, the permit holder shall terminate the dispensing and/or distribution of drugs and/or devices from the pharmacy.

2. Disposition of Inventory

a. Controlled Dangerous Substances Listed in Schedule II. These drugs shall be either returned to the supplier or transferred to an authorized registrant, accompanied by an executed DEA Form 222, or its successor. Alternatively, these drugs shall be inventoried on the DEA Form 41 (registrant's inventory of drugs surrendered), or its successor, and then either returned to the regional DEA office or destroyed, but only pursuant to permission from the DEA or agent of the board. The permit holder shall retain triplicate copies of returns, transfers, and/or destructions.

b. Controlled Dangerous Substances Listed in Schedules III, IV, or V. These drugs shall be either returned to the supplier or transferred to an authorized registrant, accompanied by appropriate inventory records. Alternatively, these drugs shall be inventoried on the DEA Form 41, or its successor, and then either returned to the

regional DEA office, or destroyed pursuant to permission from the DEA or agent of the board.

c. All Other Prescription and Non-prescription Drugs and/or Devices. These items shall be returned to the supplier, transferred to an authorized registrant, or destroyed.

3. Surrender of Credentials and Board Notice

a. All drugs, devices, prescription records and other pharmacy records have been removed from the premises, the permit holder shall prepare and render a final closure notice to the board. The notice shall contain the following:

i. disposition and destination of all drugs and/or devices held by the pharmacy;

ii. disposition and destination of all prescriptions and medical orders dispensed or administered to patients;

iii. disposition and destination of all other pharmacy records, including acquisition, inventory, and disposition records for all drugs and/or devices;

iv. the commitment to store such records for no less than two years following the closure of the pharmacy, and further, to make any and all such records available for inspection by the board no later than 72 hours following a request from the board;

v. the certification that all signage indicating the presence of a pharmacy has been removed from the premises;

vi. the confirmation of the surrender of any federal DEA registration held by the pharmacy to the regional DEA office; and

vii. the original and all duplicate copies of the special event pharmacy, and if applicable, Louisiana CDS license.

b. The pharmacist-in-charge of the special event pharmacy permit has the primary responsibility for the proper closure of the pharmacy permit. However, in the event the pharmacist-in-charge fails to complete the task, then the permit holder shall be responsible for the proper closure of the pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 41:100 (January 2015).

§2415. Standards of Practice

A. General Requirements

1. The special event pharmacy shall be of sufficient size and shall contain sufficient fixtures, equipment, and supplies commensurate with the scope of practice for that pharmacy, provided:

a. the pharmacy shall be of sufficient size to allow for the safe and proper storage of prescription drugs and, if applicable, controlled dangerous substances;

b. all areas where drugs and devices are stored shall be dry, well-lighted, well ventilated, and maintained at temperatures which will ensure the integrity of drugs prior to their dispensing as stipulated by the United States Pharmacopeia (USP) and/or manufacturer's or distributor's product labeling unless otherwise indicated by the board;

c. the pharmacy shall be secured by either a physical barrier with suitable locks and/or an electronic barrier to detect entry at a time when the pharmacist is not present; and

d. prescription and other patient healthcare information shall be maintained in a manner that protects the integrity and confidentiality of such information.

2. The pharmacist-in-charge of the special event pharmacy shall be responsible for all pharmacy operations including supervision of all pharmacy personnel.

3. The pharmacy shall have at least one licensed pharmacist on duty and physically present in the pharmacy at all times the pharmacy is open for the transaction of business.

4. The pharmacy shall have a sufficient number of pharmacists and/or other pharmacy personnel on duty to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

5. When the pharmacy is closed or there is no pharmacist on duty, other individuals shall not have access to the pharmacy except for temporary absences as provided for in Chapter 11 of these rules.

6. The special event pharmacy shall comply with the recordkeeping requirements identified in Chapter 11 of these rules.

7. The compounding of preparations in a special event pharmacy shall be accomplished in compliance with the current federal standards applicable to such practices: USP chapter 795, or its successor, for the compounding of non-sterile preparations and USP chapter 797, or its successor, for the compounding of sterile preparations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 41:101 (January 2015).

Malcolm J. Broussard
Executive Director

1501#011

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Crisis Receiving Centers
Licensing Standards
(LAC 48:I.Chapters 53 and 54)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 48:I.Chapters 53 and 54 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:2180.14. 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 53. Level III Crisis Receiving Centers
Subchapter A. General Provisions
§5301. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment, and enforcement of statewide licensing standards for the care of patients and clients in level III crisis receiving centers (CRCs);

2. ensure the maintenance of these standards; and

3. regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of behavioral health facilities.

B. The purpose of a CRC is to provide intervention and stabilization services in order for the client to achieve stabilization and be discharged and referred to the lowest appropriate level of care that meets the client's needs. The estimated length of stay in a CRC is 3-7 days.

C. In addition to the requirements stated herein, all licensed CRCs shall comply with applicable local, state, and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:101 (January 2015).

§5303. Definitions

Active Client—a client of the CRC who is currently receiving services from the CRC.

Administrative Procedure Act—R.S. 49:950 et seq.

Administrative Review—Health Standards Section's review of documentation submitted by the center in lieu of an on-site survey.

Adult—a person that is at least 18 years of age.

Authorized Licensed Prescriber—a physician or nurse practitioner licensed in the state of Louisiana and with full prescriptive authority authorized by the CRC to prescribe treatment to clients of the specific CRC at which he/she practices.

Building and Construction Guidelines—structural and design requirements applicable to a CRC; does not include occupancy requirements.

Change of Ownership (CHOW)—the sale or transfer, whether by purchase, lease, gift or otherwise, of a CRC by a person/corporation of controlling interest that results in a change of ownership or control of 30 percent or greater of either the voting rights or assets of a CRC or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the CRC.

CLIA—clinical laboratory improvement amendment.

Client Record—a single complete record kept by the CRC which documents all treatment provided to the client. The record may be electronic, paper, magnetic material, film or other media.

Construction Documents—building plans and specifications.

Contraband—any object or property that is against the CRC's policies and procedures to possess.

Coroner's Emergency Certificate (CEC)—a certificate issued by the coroner pursuant to R.S. 28:53.3.

Crisis Receiving Services—services related to the treatment of people in behavioral crisis, including crisis identification, intervention and stabilization.

Department—the Louisiana Department of Health and Hospitals.

Direct Care Staff—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as direct care staff.

Disaster or *Emergency*—a local, community-wide, regional or statewide event that may include, but is not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

Division of Administrative Law (DAL)—The Louisiana Department of State Civil Service, *Division of Administrative Law* or its successor entity.

Grievance—a formal or informal written or verbal complaint that is made to the CRC by a client or the client's family or representative regarding the client's care, abuse or neglect when the complaint is not resolved at the time of the complaint by staff present.

HSS—the Department of Health and Hospitals, Office of the Secretary, Office of Management and Finance, Health Standards Section.

Human Services Field—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

*Level III Crisis Receiving Center (*or *Center* or *CRC)*—an agency, business, institution, society, corporation, person or persons, or any other group, licensed by the Department of Health and Hospitals to provide crisis identification, intervention and stabilization services for people in behavioral crisis. A CRC shall be no more than 24 beds.

Licensed Mental Health Professional (LMHP)—an individual who is licensed in the state of Louisiana to diagnose and treat mental illness or substance abuse, acting within the scope of all applicable state laws and their professional license. A LMHP must be one of the following individuals licensed to practice independently:

1. a physician/psychiatrist;
2. a medical psychologist;
3. a licensed psychologist;
4. a licensed clinical social worker (LCSW);
5. a licensed professional counselor (LPC);
6. a licensed marriage and family therapist (LMFT);
7. a licensed addiction counselor (LAC);
8. an advanced practice registered nurse or APRN (must be a nurse practitioner specialist in adult psychiatric and mental health or family psychiatric and mental health);
9. a certified nurse specialist in one of the following:
   a. psychosocial, gerontological psychiatric mental health;
   b. adult psychiatric and mental health; or
   c. child-adolescent mental health.

LSBME—Louisiana State Board of Medical Examiners.

MHERE—mental health emergency room extension operating as a unit of a currently-licensed hospital.

Minor—a person under the age of 18.

OBH—the Department of Health and Hospitals, Office of Behavioral Health.

OHSEP—Office of Homeland Security and Emergency Preparedness.

On Call—immediately available for telephone consultation and less than one hour from ability to be on duty.

On Duty—scheduled, present, and awake at the site to perform job duties.

OPC—order for protective custody issued pursuant to R.S. 28:53.2.

OSFM—the Louisiana Department of Public Safety and Corrections, Office of State Fire Marshal.

PEC—an emergency certificate executed by a physician, psychiatric mental health nurse practitioner, or psychologist pursuant to R.S. 28:53.

Physician—an individual who holds a medical doctorate or a doctor of osteopathy from a medical college in good standing with the LSBME and a license, permit, certification, or registration issued by the LSBME to engage in the practice of medicine in the state of Louisiana.

Qualifying Experience—experience used to qualify for any position that is counted by using one year equals 12 months of full-time work.

Seclusion Room—a room that may be secured in which one client may be placed for a short period of time due to the client's increased need for security and protection.

Shelter in Place—when a center elects to stay in place rather than evacuate when located in the projected path of an approaching storm equal to or greater than tropical storm strength.

Sleeping Area—a single constructed room or area that contains a minimum of three individual beds.

Tropical Storm Strength—a tropical cyclone in which the maximum sustained surface wind speed (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 mps).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:102 (January 2015).

Subchapter B. Licensing

§5309. General Licensing Provisions

A. All entities providing crisis receiving services shall be licensed by the Department of Health and Hospitals (DHH). It shall be unlawful to operate as a CRC without a license issued by the department. DHH is the only licensing authority for CRCs in Louisiana.

B. A CRC license authorizes the center to provide crisis receiving services.

C. The following entities are exempt from licensure under this Chapter:

1. community mental health centers;
2. hospitals;
3. nursing homes;
4. psychiatric rehabilitative treatment facilities;
5. school-based health centers;
6. therapeutic group homes;
7. HCBS agencies;
8. substance abuse/addictive disorder facilities;
9. mental health clinics;
10. center-based respites;
11. MHEREs;
12. individuals certified by OBH to provide crisis intervention services; and
13. federally-owned facilities.

D. A CRC license is not required for individual or group practice of LMHPs providing services under the auspices of their individual professional license(s).

E. A CRC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the CRC to which it is issued and only for the geographic address of that CRC approved by DHH;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the CRC;
5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

F. In order for the CRC to be considered operational and retain licensed status, the following applicable operational requirements shall be met. The CRC shall:

1. be open and operating 24 hours per day, 7 days per week;
2. have the required staff on duty at all times to meet the needs of the clients; and
3. be able to screen and either admit or refer all potential clients at all times.

G. The licensed CRC shall abide by any state and federal law, rule, policy, procedure, manual or memorandum pertaining to crisis receiving centers.

H. The CRC shall permit designated representatives of the department, in the performance of their duties, to:

1. inspect all areas of the center's operations; and
2. conduct interviews with any staff member, client, or other person as necessary.

I. CRC Names

1. A CRC is prohibited from using:
   a. the same name as another CRC;
   b. a name that resembles the name of another center;
   c. a name that may mislead the client or public into believing it is owned, endorsed, or operated by the state of Louisiana when it is not owned, endorsed, or operated by the state of Louisiana.

J. Plan Review

1. Any entity that intends to operate as a CRC, except one that is converting from a MHERE or an existing CRC, shall complete the plan review process and obtain approval for its construction documents for the following types of projects:
   a. new construction;
   b. any entity that intends to operate and be licensed as a CRC in a physical environment that is not currently licensed as a CRC; or
   c. major alterations.
2. The CRC shall submit one complete set of construction documents with an application and review fee to the OSFM for review. Plan review submittal to the OSFM

shall be in accordance with R.S. 40:1574, and the current *Louisiana Administrative Code* (LAC) provisions governing fire protection for buildings (LAC 55:V.Chapter 3 as of this promulgation), and the following criteria:

a. any change in the type of license shall require review for requirements applicable at the time of licensing change;

b. requirements applicable to occupancies, as defined by the most recently state-adopted edition of *National Fire Protection Association (NFPA) 101*, where services or treatment for four or more patients are provided;

c. requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101; and

d. the specific requirements outlined in the Physical Environment requirements of this Chapter.

3. Construction Document Preparation

a. The CRC's construction documents shall be prepared by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed.

b. The CRC's construction documents shall be of an architectural or engineering nature and thoroughly illustrate an accurately drawn and dimensioned project that contains noted plans, details, schedules and specifications.

c. The CRC shall submit at least the following in the plan review process:

i. site plans;

ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;

iii. building elevations;

iv. room finish, door, and window schedules;

v. details pertaining to Americans with Disabilities Act (ADA) requirements; and

vi. specifications for materials.

4. Upon OSFM approval, the CRC shall submit the following to DHH:

a. the final construction documents approved by OSFM; and

b. OSFM's approval letter.

K. Waivers

1. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the state *Sanitary Code*.

2. In order to request a waiver, the CRC shall submit a written request to HSS that demonstrates:

a. how patient safety and quality of care offered is not comprised by the waiver;

b. the undue hardship imposed on the center if the waiver is not granted; and

c. the center's ability to completely fulfill all other requirements of service.

3. DHH will make a written determination of each waiver request.

4. Waivers are not transferable in an ownership change or geographic change of location, and are subject to review or revocation upon any change in circumstances related to the waiver.

5. DHH prohibits waivers for new construction.

L. A person or entity convicted of a felony or that has entered a guilty plea or a plea of nolo contendere to a felony is prohibited from being the CRC or owner, clinical supervisor or any managing employee of a CRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:103 (January 2015).

§5311. Initial Licensure Application Process

A. Any entity, organization or person interested in operating a crisis receiving center must submit a completed initial license application packet to the department for approval. Initial CRC licensure application packets are available from HSS.

B. A person/entity/organization applying for an initial license must submit a completed initial licensing application packet which shall include:

1. a completed CRC licensure application;

2. the non-refundable licensing fee as established by statute;

3. the approval letter of the architectural center plans for the CRC from OSFM, if the center must go through plan review;

4. the on-site inspection report with approval for occupancy by the OSFM, if applicable;

5. the health inspection report from the Office of Public Health (OPH);

6. a statewide criminal background check, including sex offender registry status, on all owners and managing employees;

7. except for governmental entities or organizations, proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least $100,000;

b. general and professional liability insurance of at least $500,000; and

c. worker's compensation insurance;

8. an organizational chart and names, including position titles, of key administrative personnel and the governing body;

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

10. a letter of intent indicating whether the center will serve minors or adults and the center's maximum number of beds;

11. if operated by a corporate entity, such as a corporation or an limited liability corporation (LLC), current proof of registration and status with the Louisiana Secretary of State's office;

12. a letter of recommendation from the OBH regional office or its designee; and

13. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant shall:

1. be notified of the missing information; and

2. be given 90 days from receipt of the notification to submit the additional requested information or the application will be closed.

D. Once the initial licensing application is approved by DHH, notification of such approval shall be forwarded to the applicant.

E. The applicant shall notify DHH of initial licensing survey readiness within the required 90 days of receipt of application approval. If an applicant fails to notify DHH of initial licensing survey readiness within 90 days, the application will be closed.

F. If an initial licensing application is closed, an applicant who is still interested in operating a CRC must submit a:

1. new initial licensing packet; and
2. non-refundable licensing fee.

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

H. An entity that intends to become a CRC is prohibited from providing crisis receiving services to clients during the initial application process and prior to obtaining a license, unless it qualifies as one of the following facilities:

1. a hospital-based CRC;
2. an MHERE;
3. an MHERE that has communicated its intent to become licensed as a CRC in collaboration with the department prior to February 28, 2013; or
4. a center-based respite.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:104 (January 2015).

§5313. Initial Licensing Surveys

A. Prior to the initial license being issued, an initial licensing survey shall be conducted on-site to ensure compliance with the licensing laws and standards.

B. If the initial licensing survey finds that the center is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center.

C. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, and the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department:

1. may issue a provisional initial license for a period not to exceed six months; and
2. shall require the center to submit an acceptable plan of correction.

a. The department may conduct a follow-up survey following the initial licensing survey after receipt of an acceptable plan of correction to ensure correction of the deficiencies. If all deficiencies are corrected on the follow-up survey, a full license will be issued.

b. If the center fails to correct the deficiencies, the initial license may be denied.

E. The initial licensing survey of a CRC shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:105 (January 2015).

§5315. Types of Licenses

A. The department has the authority to issue the following types of licenses.

1. Initial License

a. The department shall issue a full license to the CRC when the initial licensing survey indicates the center is compliant with:

i. all licensing laws and regulations;

ii. all other required statutes, laws, ordinances, rules, regulations; and

iii. fees.

b. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

2. Provisional Initial License

a. The department may issue a provisional initial license to the CRC when the initial licensing survey finds that the CRC is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

i. The center shall submit a plan of correction to the department for approval, and the center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

ii. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

iii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

3. Renewal License. The department may issue a renewal license to a licensed CRC that 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. Provisional License. The department may issue a provisional license to a licensed CRC for a period not to exceed six months.

a. A provisional license may be issued for the following reasons:

i. more than five deficiencies cited during any one survey;

ii. four or more validated complaints in a consecutive 12-month period;

iii. a deficiency resulting from placing a client at risk for serious harm or death;

iv. failure to correct deficiencies within 60 days of notification of such deficiencies, or at the time of a follow-up survey; or

v. failure to be 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.

b. The department may extend the provisional license for an additional period not to exceed 90 days in order for the center to correct the deficiencies.

c. The center shall submit an acceptable plan of correction to DHH and correct all noncompliance or deficiencies prior to the expiration of the provisional license.

d. The department shall conduct a follow-up survey of the CRC, either on-site or by administrative review, prior to the expiration of the provisional license.

e. If the follow-up survey determines that the CRC has corrected the deficiencies and has maintained compliance during the period of the provisional license, the department may issue a license that will expire on the expiration date of the most recent renewal or initial license.

f. The provisional license shall expire if:

i. the center fails to correct the deficiencies by the follow-up survey; or

ii. the center is cited with new deficiencies at the follow-up survey indicating a risk to the health, safety, or welfare of a client.

g. If the provisional license expires, the center shall be required to begin the initial licensing process by submitting a:

i. new initial license application packet; and

ii. non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:105 (January 2015).

§5317. Changes in Licensee Information or Personnel

A. Within five days of the occurrence, the CRC shall report in writing to HSS the following changes to the:

1. CRC's entity name;
2. business name;
3. mailing address; or
4. telephone number.

B. Any change to the CRC's name or "doing business as name requires a $25 nonrefundable fee for the issuance of an amended license with the new name.

C. A CRC shall report any change in the CRC's key administrative personnel within five days of the change.

1. Key administrative personnel include the:

a. CRC manager;

b. clinical director; and

c. nurse manager.

2. The CRC's notice to the department shall include the incoming individual's:

a. name;

b. date of appointment to the position; and

c. qualifications.

D. Change of Ownership (CHOW)

1. A CRC shall report a CHOW in writing to the department at least five days prior to the change. Within five days following the change, the new owner shall submit:

a. the legal CHOW document;

b. all documents required for a new license; and

c. the applicable nonrefundable licensing fee.

2. A CRC that is under license revocation, provisional licensure, or denial of license renewal may not undergo a CHOW.

3. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

E. Change in Physical Address

1. A CRC that intends to change the physical address of its geographic location shall submit:

a. a written notice to HSS of its intent to relocate;

b. a plan review request;

c. a new license application;

d. a nonrefundable license fee; and

e. any other information satisfying applicable licensing requirements.

2. In order to receive approval for the change of physical address, the CRC must:

a. have a plan review approval;

b. have approval from OSFM and OPH recommendation for license;

c. have an approved license application packet;

d. be in compliance with other applicable licensing requirements; and

e. have an on-site licensing survey prior to relocation of the center.

3. Upon approval of the requirements for a change in physical address, the department shall issue a new license to the CRC.

F. Any request for a duplicate license shall be accompanied by a $25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:106 (January 2015).

§5319. Renewal of License

A. A CRC license expires on the expiration date listed on the license, unless timely renewed by the CRC.

B. To renew a license, the CRC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet includes:

1. the license renewal application;
2. a current State Fire Marshal report;
3. a current OPH inspection report;
4. the non-refundable license renewal fee;
5. any other documentation required by the department; and
6. except for governmental entities or organizations, proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least $100,000;

b. general and professional liability insurance of at least $500,000; and

c. worker's compensation insurance.

C. The department may perform an on-site survey and inspection of the center upon renewal.

D. Failure to submit a completed license renewal application packet prior to the expiration of the current

license will result in the voluntary non-renewal of the CRC license upon the license's expiration.

E. 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 center.

F. If a licensed CRC has been issued a notice of license revocation or suspension, and the center's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

G. Voluntary Non-Renewal of a License

1. If a center fails to timely renew its license, the license:

a. expires on the license's expiration date; and

b. is considered a non-renewal and voluntarily surrendered.

2. There is no right to an administrative reconsideration or appeal from a voluntary surrender or non-renewal of the license.

3. If a center fails to timely renew its license, the center shall immediately cease providing services, unless the center is actively treating clients, in which case the center shall:

a. within two days of the untimely renewal, provide written notice to HSS of the number of clients receiving treatment at the center;

b. within two days of the untimely renewal, provide written notice to each active client's prescribing physician and to every client, or, if applicable, the client's parent or legal guardian, of the following:

i. voluntary non-renewal of license;

ii. date of closure; and

iii. plans for the transition of the client;

c. discharge and transition each client in accordance with this Chapter within 15 days of the license's expiration date; and

d. within 30 days of the license's expiration date, notify HSS of the location where records will be stored in compliance with federal and state laws and the name, address, and phone number of the person responsible for the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:106 (January 2015).

§5321. Licensing Surveys

A. The department may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing crisis receiving centers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. If deficiencies are cited, the department may require the center to submit an acceptable plan of correction.

C. The department may conduct a follow-up survey following any survey in which deficiencies were cited to ensure correction of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:107 (January 2015).

§5323. Complaint Surveys

A. Pursuant to R.S. 40:2009.13 et seq., the department has the authority to conduct unannounced complaint surveys on crisis receiving centers.

B. The department shall issue a statement of deficiency to the center if it finds a deficiency during the complaint survey.

C. Plan of Correction

1. Once the department issues a statement of deficiencies, the department may require the center to submit an acceptable plan of correction.

2. If the department determines that other action, such as license revocation, is appropriate, the center:

a. may not be required to submit a plan of correction; and

b. will be notified of such action.

D. Follow-up Surveys

1. The department may conduct a follow-up survey following a complaint survey in which deficiencies were cited to ensure correction of the deficient practices.

2. If the department determines that other action, such as license revocation, is appropriate:

a. a follow-up survey is not necessary; and

b. the center will be notified of such action.

E. Informal Reconsiderations of Complaint Surveys

1. A center that is cited with deficiencies found during a complaint survey has the right to request an informal reconsideration of the deficiencies. The center's written request for an informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

2. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review.

3. Correction of the violation or deficiency shall not be the basis for the reconsideration.

4. The center shall be notified in writing of the results of the informal reconsideration.

5. Except for the right to an administrative appeal provided in R.S. 40:2009.16, the informal reconsideration shall constitute final action by the department regarding the complaint survey, and there shall be no further right to an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:107 (January 2015).

§5325. Statement of Deficiencies

A. The CRC shall make any statement of deficiencies available to the public upon request after the center submits a plan of correction that is accepted by the department or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

B. Informal Reconsiderations

1. Unless otherwise provided in statute or in this Chapter, a CRC has the right to an informal reconsideration of any deficiencies cited as a result of a survey.

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

3. The center's written request for informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. HSS shall notify the center in writing of the results of the informal reconsideration.

6. Except as provided pursuant to R.S. 40:2009.13 et seq., and as provided in this Chapter:

a. the informal reconsideration decision is the final administrative decision regarding the deficiencies; and

b. there is no right to an administrative appeal of such deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:107 (January 2015).

§5327. Cessation of Business

A. Except as provided in §5407 of these licensing regulations, a license shall be immediately null and void if a provider ceases to operate.

B. A cessation of business is deemed to be effective the date on which the provider stopped offering or providing services to the community.

C. Upon the cessation of business, the provider shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the provider. The provider does not have a right to appeal a cessation of business.

E. A CRC that intends to cease operations shall:

1. provide 30 days advance written notice to HSS and the active client, or if applicable, the client's parent(s), legal guardian, or designated representative; and

2. discharge and transition all clients in accordance with this Chapter.

F. The provider shall notify the department in writing 30 days prior to the effective date of the closure or cessation. In addition to the notice, the provider shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure;

2. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's patients medical records;

3. an appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction;

4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 days prior to the effective date of closure.

G. If a CRC fails to follow these procedures, the department may prohibit the owners, managers, officers, directors, and/or administrators from opening, managing, directing, operating, or owning a CRC for a period of two years.

H. Once the provider has ceased doing business, the provider shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:108 (January 2015).

§5329. Sanctions

A. The department may issue sanctions for deficiencies and violations of law, rules and regulations that may include, but are not limited to:

1. civil fines;

2. directed plans of correction;

3. provisional licensure; and/or

4. license revocation or denial of license renewal.

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

C. The department may deny an initial license, revoke a license or deny a license renewal for any of the following reasons, including but not limited to:

1. failure to be in compliance with the CRC licensing laws, rules and regulations;

2. failure to be in 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. cruelty or indifference to the welfare of the clients;

5. misappropriation or conversion of the property of the clients;

6. permitting, aiding or abetting the unlawful, illicit or unauthorized use of drugs or alcohol within the center of a program;

7. documented information of past or present conduct or practices of an employee or other staff which are detrimental to the welfare of the clients, including but not limited to:

a. illegal activities; or

b. coercion or falsification of records;

8. failure to protect a client from a harmful act of an employee or other client including, but not limited to:

a. mental or physical abuse, neglect, exploitation or extortion;

b. any action posing a threat to a client's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

f. criminal activity;

9. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in Paragraph D.8 above;

10. 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, client records or center 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;

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

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

13. the CRC, an owner, officer, member, manager, administrator, medical director, managing employee, or clinical supervisor has pled guilty or nolo contendere to a felony, or is convicted of a felony, as documented by a certified copy of the record of the court;

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

15. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or clients;

16. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

17. failure to allow or refusal to allow access to center or client records by authorized departmental personnel;

18. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular CRC;

19. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

20. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department; or

21. failure to uphold client rights that may have resulted or may result in harm, injury or death of a client.

D. If the department determines that the health and safety of a client or the community may be at risk, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The department will provide written notification to the center if the imposition of the action will be immediate.

E. Any owner, officer, member, manager, director or administrator of such CRC is prohibited from owning, managing, directing or operating another CRC for a period of two years from the date of the final disposition of any of the following:

1. license revocation;
2. denial of license renewal; or
3. the license is surrendered in lieu of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:108 (January 2015).

§5331. Notice and Appeal of License Denial, License Revocation and Denial of License Renewal

A. The department shall provide written notice to the CRC of the following:

1. license denial;
2. license revocation; or
3. denial of license renewal.

B. The CRC has the right to an administrative reconsideration of the license denial, license revocation or denial of license renewal.

1. If the CRC chooses to request an administrative reconsideration, the request must:

a. be in writing addressed to HSS;

b. be received by HSS within 15 calendar days of the center's receipt of the notice of the license denial, license revocation or denial of license renewal; and

c. include any documentation that demonstrates that the determination was made in error.

2. If a timely request for an administrative reconsideration is received, HSS shall provide the center with written notification of the date of the administrative reconsideration.

3. The center may appear in person at the administrative reconsideration and may be represented by counsel.

4. HSS shall not consider correction of a deficiency or violation as a basis for the reconsideration.

5. The center will be notified in writing of the results of the administrative reconsideration.

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

D. The CRC has a right to an administrative appeal of the license denial, license revocation or denial of license renewal.

1. If the CRC chooses to request an administrative appeal, the request must:

a. be received by the DAL within 30 days of:

i. the receipt of the results of the administrative reconsideration; or

ii. the receipt of the notice of the license denial, revocation or denial of license renewal, if the CRC chose to forego its rights to an administrative reconsideration;

b. be in writing;

c. include any documentation that demonstrates that the determination was made in error; and

d. include the basis and specific reasons for the appeal.

2. The DAL shall not consider correction of a violation or a deficiency as a basis for the administrative appeal.

E. Administrative Appeals of License Revocations and Denial of License Renewals

1. If a timely request for an administrative appeal is received by the DAL, the center will be allowed to continue to operate and provide services until the DAL issues a final administrative decision.

F. Administrative Appeals of Immediate License Revocations or Denial of License Renewals

1. If DHH imposes an immediate license revocation or denial of license renewal, DHH may enforce the revocation or denial of license renewal during the appeal process.

2. If DHH chooses to enforce the revocation or denial of license renewal during the appeal process, the center will not be allowed to operate and/or provide services during the appeal process.

G. If a licensed CRC has a pending license revocation, and the center'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.

H. Administrative Hearings of License Denials, Denial of License Renewals and License Revocations

1. If a timely administrative appeal is submitted by the center, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

2. If the final DAL decision is to reverse the license denial, denial of license renewal or license revocation, the center's license will be re-instated upon the payment of any outstanding fees or sanctions fees due to the department.

3. If the final DAL decision is to affirm the denial of license renewal or license revocation, the center shall:

a. discharge and transition any and all clients receiving services according to the provisions of this Chapter;

b. comply with the requirements governing cessation of business in this Chapter; and

c. notify HSS within 10 days of closure of the location where the records will be stored and the name, address and phone number of the person responsible for the records.

I. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new CRC, or the issuance of a provisional license to a licensed CRC.

J. Administrative Reconsiderations and Administrative Appeals of the Expiration of a Provisional Initial License or Provisional License

1. A CRC with a provisional initial license, or a provisional license that expires due to deficiencies cited at the follow-up survey, has the right to request an administrative reconsideration and/or an administrative appeal of the deficiencies cited at the follow-up survey.

2. The center's request for an administrative reconsideration must:

a. be in writing;

b. be received by the HSS within five calendar days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the administrative reconsideration.

3. Correction of a violation or deficiency after the follow-up survey will not be considered as the basis for the administrative reconsideration or for the administrative appeal.

4. The issue to be decided in the administrative reconsideration and the administrative appeal is whether the deficiencies were properly cited at the follow-up survey.

5. The CRC's request for an administrative appeal must:

a. be in writing;

b. be submitted to the DAL within 15 calendar days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the appeal.

6. A center with a provisional initial license or a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge or transition clients unless the DAL or successor entity issues a stay of the expiration.

a. To request a stay, the center must submit its written application to the DAL at the time the administrative appeal is filed.

b. The DAL shall hold a contradictory hearing on the stay application. If the center shows that there is no potential harm to the center's clients, then the DAL shall grant the stay.

7. Administrative Hearing

a. If the CRC submits a timely request for an administrative hearing, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

b. If the final DAL decision is to remove all deficiencies, the department will reinstate the center's license upon the payment of any outstanding fees and settlement of any outstanding sanctions due to the department.

c. If the final DAL decision is to uphold the deficiencies, thereby affirming the expiration of the provisional license, the center shall discharge any and all clients receiving services in accordance with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:109 (January 2015).

Subchapter C. Organization and Administration

§5337. General Provisions

A. Purpose and Organizational Structure. The CRC shall develop and implement a statement maintained by the center that clearly defines the purpose of the CRC. The statement shall include:

1. the program philosophy;

2. the program goals and objectives;

3. the ages, sex and characteristics of clients accepted for care;

4. the geographical area served;

5. the types of services provided;

6. the admission criteria;

7. the needs, problems, situations or patterns addressed by the provider's program; and

8. an organizational chart of the provider which clearly delineates the lines of authority.

B. The CRC shall provide supervision and services that:

1. conform to the department's rules and regulations;

2. meet the needs of the client as identified and addressed in the client's treatment plan;

3. protect each client's rights; and

4. promote the social, physical and mental well-being of clients.

C. The CRC shall maintain any information or documentation related to compliance with this Chapter and shall make such information or documentation available to the department.

D. Required Reporting. The center shall report the following incidents in writing to HSS within 24 hours of discovery:

1. any disaster or emergency or other unexpected event that causes significant disruption to program operations;

2. any death or serious injury of a client:

a. that may potentially be related to program activities; or

b. who at the time of his/her death or serious injury was an active client of the center; and

3. allegations of client abuse, neglect, exploitation and misappropriation of client funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:110 (January 2015).

§5339. Governing Body

A. A crisis receiving center shall have the following:

1. an identifiable governing body with responsibility for and authority over the policies and operations of the center;

2. documents identifying the governing body's:

a. members;

b. contact information for each member;

c. terms of membership;

d. officers; and

e. terms of office for each officer.

B. The governing body of a CRC shall:

1. be comprised of one or more persons;

2. hold formal meetings at least twice a year;

3. maintain written minutes of all formal meetings of the governing body; and

4. maintain by-laws specifying frequency of meetings and quorum requirements.

C. The responsibilities of a CRC's governing body include, but are not limited to:

1. ensuring the center's compliance with all federal, state, local and municipal laws and regulations as applicable;

2. maintaining funding and fiscal resources to ensure the provision of services and compliance with this Chapter;

3. reviewing and approving the center's annual budget;

4. designating qualified persons to act as CRC manager, clinical director and nurse manager, and delegating these persons the authority to manage the center;

5. at least once a year, formulating and reviewing, in consultation with the CRC manager, clinical director and nurse manager, written policies concerning:

a. the provider's philosophy and goals;

b. current services;

c. personnel practices and job descriptions; and

d. fiscal management;

6. evaluating the performances of the CRC manager, clinical director and nurse manager at least once a year;

7. meeting with designated representatives of the department whenever required to do so;

8. informing the department, or its designee, prior to initiating any substantial changes in the services provided by the center; and

9. ensuring statewide criminal background checks are conducted as required in this Chapter and state law.

D. A governing body shall ensure that the CRC maintains the following documents:

1. minutes of formal meetings and by-laws of the governing body;

2. documentation of the center's authority to operate under state law;

3. all leases, contracts and purchases-of-service agreements to which the center is a party;

4. insurance policies;

5. annual operating budgets;

6. a master list of all the community resources used by the center;

7. documentation of ownership of the center;

8. documentation of all accidents, incidents, abuse/neglect allegations; and

9. a daily census log of clients receiving services.

E. The governing body of a CRC shall ensure the following with regards to contract agreements to provide services for the center.

1. The agreement for services is in writing.

2. Every written agreement is reviewed at least once a year.

3. The deliverables are being provided as per the agreement.

4. The center retains full responsibility for all services provided by the agreement.

5. All services provided by the agreement shall:

a. meet the requirements of all laws, rules and regulations applicable to a CRC; and

b. be provided only by qualified providers and personnel in accordance with this Chapter.

6. If the agreement is for the provision of direct care services, the written agreement specifies the party responsible for screening, orientation, ongoing training and development of and supervision of the personnel providing services pursuant to the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:111 (January 2015).

§5341. Policies and Procedures

A. Each CRC shall develop, implement and comply with center-specific written policies and procedures governing all requirements of this chapter, including, but not limited to the following areas:

1. protection of the health, safety, and wellbeing of each client;

2. providing treatment in order for clients to achieve optimal stabilization;

3. access to care that is medically necessary;

4. uniform screening for patient placement and quality assessment, diagnosis, evaluation, and referral to appropriate level of care;

5. operational capability and compliance;

6. delivery of services that are cost-effective and in conformity with current standards of practice;

7. confidentiality and security of all client information, records and files;

8. prohibition of illegal or coercive inducement, solicitation and kickbacks;

9. client rights;

10. grievance process;

11. emergency preparedness;

12. abuse and neglect;

13. incidents and accidents, including medical emergencies;

14. universal precautions;

15. documentation of services;

16. admission, including descriptions of screening and assessment procedures;

17. transfer and discharge procedures;

18. behavior management;
19. infection control;
20. transportation;
21. quality assurance;
22. medical and nursing services;
23. emergency care;
24. photography and video of clients; and
25. contraband.

B. A center shall develop, implement and comply with written personnel policies in the following areas:

1. recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff including volunteers;

2. written job descriptions for each staff position, including volunteers;

3. conducting staff health assessments that are consistent with OPH guidelines and indicate whether, when and how staff have a health assessment;

4. an employee grievance procedure;

5. abuse reporting procedures that require:

a. staff to report any allegations of abuse or mistreatment of clients pursuant to state and federal law; and

b. staff to report any allegations of abuse, neglect, exploitation or misappropriation of a client to DHH;

6. a non-discrimination policy;

7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor, CRC manager or clinical director as soon as possible to prevent the spread of disease or illness to other individuals;

8. procedures to ensure that only qualified personnel are providing care within the scope of the center's services;

9. policies governing staff conduct and procedures for reporting violations of laws, rules, and professional and ethical codes of conduct;

10. policies governing staff organization that pertain to the center's purpose, setting and location;

11. procedures to ensure that the staff's credentials are verified, legal and from accredited institutions; and

12. obtaining criminal background checks.

C. A CRC shall comply with all federal and state laws, rules and regulations in the implementation of its policies and procedures.

D. Center Rules

1. A CRC shall:

a. have a clearly written list of rules governing client conduct in the center;

b. provide a copy of the center's rules to all clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission; and

c. post the rules in an accessible location in the center.

E. The facility shall develop, implement and comply with policies and procedures that:

1. give consideration to the client's chronological and developmental age, diagnosis, and severity of illness when assigning a sleeping area or bedroom;

2. ensure that each client has his/her own bed; and

3. prohibit mobile homes from being used as client sleeping areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:111 (January 2015).

Subchapter D. Provider Operations

§5347. Client Records

A. The CRC shall ensure:

1. a single client record is maintained for each client according to current professional standards;

2. policies and procedures regarding confidentiality of records, maintenance, safeguarding and storage of records are developed, implemented and followed;

3. safeguards are in place to prevent unauthorized access, loss, and destruction of client records;

4. when electronic health records are used, the most up to date technologies and practices are used to prevent unauthorized access;

5. records are kept confidential according to federal and state laws and regulations;

6. records are maintained at the center where the client is currently active and for six months after discharge;

7. six months post-discharge, records may be transferred to a centralized location for maintenance;

8. client records are directly and readily accessible to the clinical staff caring for the client;

9. a system of identification and filing is maintained to facilitate the prompt location of the client's record;

10. all record entries are dated, legible and authenticated by the staff person providing the treatment, as appropriate to the media;

11. records are disposed of in a manner that protects client confidentiality;

12. a procedure for modifying a client record in accordance with accepted standards of practice is developed, implemented and followed;

13. an employee is designated as responsible for the client records;

14. disclosures are made in accordance with applicable state and federal laws and regulations; and

15. client records are maintained at least 6 years from discharge.

B. Record Contents. The center shall ensure that client records, at a minimum, contain the following:

1. the treatment provided to the client;

2. the client's response to the treatment;

3. other information, including:

a. all screenings and assessments;

b. provisional diagnoses;

c. referral information;

d. client information/data such as name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;

e. documentation of incidents that occurred;

f. attendance/participation in services/activities;

g. treatment plan that includes the initial treatment plan plus any updates or revisions;

h. lab work (diagnostic laboratory and other pertinent information, when indicated);

i. documentation of the services received prior to admission to the CRC as available;

j. consent forms;

k. physicians' orders;

l. records of all medicines administered, including medication types, dosages, frequency of administration, the individual who administered each dose and response to medication given on an as needed basis;

m. discharge summary;

n. other pertinent information related to client as appropriate; and

4. legible progress notes that are documented in accordance with professional standards of practice and:

a. document implementation of the treatment plan and results;

b. document the client's level of participation; and

c. are completed upon delivery of services by the direct care staff to document progress toward stated treatment plan goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:112 (January 2015).

§5349. Client Funds and Possessions

A. The CRC shall:

1. maintain and safeguard all possessions, including money, brought to the center by clients;

2. maintain an inventory of each client's possessions from the date of admission; and

3. return all possessions to the client upon the client's discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:113 (January 2015).

§5351. Quality Improvement Plan

A. A CRC shall have a quality improvement (QI) plan that:

1. assures that the overall function of the center is in compliance with federal, state, and local laws;

2. is meeting the needs of the citizens of the area;

3. is attaining the goals and objectives established in the center's mission statement;

4. maintains systems to effectively identify issues that require quality monitoring, remediation and improvement activities;

5. improves individual outcomes and individual satisfaction;

6. includes plans of action to correct identified issues that:

a. monitor the effects of implemented changes; and

b. result in revisions to the action plan;

7. is updated on an ongoing basis to reflect changes, corrections and other modifications.

B. The QI plan shall include:

1. a sample review of client case records on a quarterly basis to ensure that:

a. individual treatment plans are up to date;

b. records are accurate, complete and current; and

c. the treatment plans have been developed and implemented as ordered;

2. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of the clients that includes, but is not limited to:

a. review and resolution of grievances;

b. incidents resulting in harm to client or elopement;

c. allegations of abuse, neglect and exploitation; and

d. seclusion and restraint;

3. a process to correct problems identified and track improvements; and

4. a process of improvement to identify or trigger further opportunities for improvement.

C. The QI plan shall establish and implement an internal evaluation procedure to:

1. collect necessary data to formulate a plan; and

2. hold quarterly staff committee meetings comprised of at least three staff members, one of whom is the CRC manager, nurse manager or clinical director, who evaluate the QI process and activities on an ongoing basis.

D. The CRC shall maintain documentation of the most recent 12 months of the QI activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:113 (January 2015).

Subchapter E. Personnel

§5357. General Requirements

A. The CRC shall maintain an organized professional staff who is accountable to the governing body for the overall responsibility of:

1. the quality of all clinical care provided to clients;

2. the ethical conduct and professional practices of its members;

3. compliance with policies and procedures approved by the governing body; and

4. the documented staff organization that pertains to the center's setting and location.

B. The direct care staff of a CRC shall:

1. have the appropriate qualifications to provide the services required by its clients' treatment plans; and

2. not practice beyond the scope of his/her license, certification or training.

C. The CRC shall ensure that:

1. qualified direct care staff members are present with the clients as necessary to ensure the health, safety and well-being of clients;

2. staff coverage is maintained in consideration of:

a. acuity of the clients being serviced;

b. the time of day;

c. the size, location, physical environment and nature of the center;

d. the ages and needs of the clients; and

e. ensuring the continual safety, protection, direct care and supervision of clients;

3. all direct care staff have current certification in cardiopulmonary resuscitation; and

4. applicable staffing requirements in this Chapter are maintained.

D. Criminal Background Checks

1. For any CRC that is treating minors, the center shall obtain a criminal background check on all staff. The background check must be conducted within 90 days prior to hire or employment in the manner required by R.S. 15:587.1.

2. For any CRC that is treating adults, the center shall obtain a statewide criminal background check on all

unlicensed direct care staff by an agency authorized by the Office of State Police to conduct criminal background checks. The background check must be conducted within 90 days prior to hire or employment.

3. A CRC that hires a contractor to perform work which does not involve any contact with clients is not required to conduct a criminal background check on the contractor if accompanied at all times by a staff person when clients are present in the center.

E. The CRC shall review the Louisiana state nurse aide registry and the Louisiana direct service worker registry to ensure that each unlicensed direct care staff member prior to hire or employment and at least annually thereafter, does not have a negative finding on either registry.

F. Prohibitions

1. The center providing services to minors is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a person who supervises minors or provides direct care to minors who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. violence, abuse or neglect against a person;

ii. possession, sale, or distribution of illegal drugs;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person; or

v. a crime of violence;

b. has a finding placed on the Louisiana state nurse aide registry or the Louisiana direct service worker registry.

2. The center providing services to adults is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. abuse or neglect of a person;

ii. possession, sale, or distribution of a controlled dangerous substance

(a). within the last five years; or

(b). when the employee/contractor is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person;

(a). within the last five years; or

(b). when the employee is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice; or

v. a crime of violence;

b. has a finding placed on the Louisiana state nurse aide registry or the Louisiana direct service worker registry.

G. Orientation and In-Service Training

1. All staff shall receive orientation prior to providing services and/or working in the center.

2. All direct care staff shall receive orientation, at least 40 hours of which is in crisis services and intervention training.

3. All direct care staff and other appropriate personnel shall receive in-service training at least once a year, at least twelve hours of which is in crisis services and intervention training.

4. All staff shall receive in-service training according to center policy at least once a year and as deemed necessary depending on the needs of the clients.

5. The content of the orientation and in-service training shall include the following:

a. confidentiality;

b. grievance process;

c. fire and disaster plans;

d. emergency medical procedures;

e. organizational structure and reporting relationships;

f. program philosophy;

g. personnel policies and procedures;

h. detecting and mandatory reporting of client abuse, neglect or misappropriation;

i. an overview of mental health and substance abuse, including an overview of behavioral health settings and levels of care;

j. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

k. side effects and adverse reactions commonly caused by psychotropic medications;

l. basic skills required to meet the health needs and challenges of the client;

m. components of a crisis cycle;

n. recognizing the signs of anxiety and escalating behavior;

o. crisis intervention and the use of non-physical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;

p. therapeutic communication;

q. client's rights;

r. duties and responsibilities of each employee;

s. standards of conduct required by the center including professional boundaries;

t. information on the disease process and expected behaviors of clients;

u. levels of observation;

v. maintaining a clean, healthy and safe environment and a safe and therapeutic milieu;

w. infectious diseases and universal precautions;

x. overview of the Louisiana licensing standards for crisis receiving centers;

y. basic emergency care for accidents and emergencies until emergency medical personnel can arrive at center; and

z. regulations, standards and policies related to seclusion and restraint, including the safe application of physical and mechanical restraints and physical assessment of the restrained client.

6. The in-services shall serve as a refresher for subjects covered in orientation.

7. The orientation and in-service training shall:

a. be provided only by staff who are qualified by education, training, and experience;

b. include training exercises in which direct care staff members successfully demonstrate in practice the techniques they have learned for managing the delivery of patient care services; and

c. require the direct care staff member to demonstrate competency before providing services to clients.

I. Staff Evaluation

1. The center shall complete an annual performance evaluation of all employees.

2. The center's performance evaluation procedures for employees who provide direct care to clients shall address the quality and nature of the employee's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:113 (January 2015).

§5359. Personnel Qualifications and Responsibilities

A. A CRC shall have the following minimum staff:

1. a CRC manager who:

a. has a minimum of a master's degree in a human services field or is a licensed registered nurse;

b. has at least one year of qualifying experience in the field of behavioral health;

c. is a full time employee; and

d. has the following assigned responsibilities:

i. supervise and manage the day to day operation of the CRC;

ii. review reports of all accidents/incidents occurring on the premises and identify hazards to the clinical director;

iii. participate in the development of new programs and modifications;

iv. perform programmatic duties and/or make clinical decisions only within the scope of his/her licensure; and

v. shall not have other job responsibilities that impede the ability to maintain the administration and operation of the CRC;

2. a clinical director who is:

a. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

b. a psychiatric and mental health nurse practitioner who has an unrestricted APRN license with prescriptive authority, and who is in collaborative practice with a Louisiana licensed physician for consultation in accordance with the Louisiana State Board of Nursing (LSBN) requirements;

c. responsible for developing and implementing policies and procedures and oversees clinical services and treatment;

d. on duty as needed and on call and available at all times;

3. a nurse manager who:

a. holds a current unrestricted license as a registered nurse (RN) in the state of Louisiana;

b. shall be a full time employee;

c. has been a RN for a minimum of five years;

d. has three years of qualifying experience providing direct care to patients with behavioral health diagnoses and at least one year qualifying experience providing direct care to medical/surgical inpatients;

e. has the following responsibilities:

i. develop and ensure implementation of nursing policies and procedures;

ii. provide oversight of nursing staff and the services they provide;

iii. ensure that any other job responsibilities will not impede the ability to provide oversight of nursing services;

4. authorized licensed prescriber who:

a. shall be either:

i. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

ii. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;

b. is on call at all times;

c. is responsible for managing the psychiatric and medical care of the clients;

5. licensed mental health professionals (LMHPs):

a. the center shall maintain a sufficient number of LMHPs to meet the needs of its clients;

b. there shall be at least one LMHP on duty during hours of operation;

c. the LMHP shall have one year of qualifying experience in direct care to clients with behavioral health diagnoses and shall have the following responsibilities:

i. provide direct care to clients and may serve as primary counselor to specified caseload;

ii. serve as a resource person for other professionals and unlicensed personnel in their specific area of expertise;

iii. attend and participate in individual care conferences, treatment planning activities, and discharge planning; and

iv. function as the client's advocate in all treatment decisions;

6. nurses:

a. the center shall maintain licensed nursing staff to meet the needs of its clients;

b. all nurses shall have:

i. a current nursing license from the state of Louisiana;

ii. at least one year qualifying experience in providing direct care to clients with a behavioral health diagnosis; and

iii. at least one year qualifying experience providing direct care to medical/surgical inpatients.

c. the nursing staff has the following responsibilities:

i. provide nursing services in accordance with accepted standards of practice, the CRC policies and the individual treatment plans of the clients;

ii. supervise non-licensed clinical personnel;

iii. each CRC shall have at least one RN on duty at the CRC during hours of operation; and

iv. as part of orientation, all nurses shall receive 24 hours of education focusing on psychotropic medications, their side effects and possible adverse reactions. All nurses shall receive training in psychopharmacology for at least four hours per year.

B. Optional Staff

1. The CRC shall maintain non-licensed clinical staff as needed who shall:

a. be at least 18 years of age;

b. have a high school diploma or GED;

c. provide services in accordance with CRC policies, documented education, training and experience, and the individual treatment plans of the clients; and

d. be supervised by the nursing staff.

2. Volunteers

a. The CRC that utilizes volunteers shall ensure that each volunteer:

i. meets the requirements of non-licensed clinical staff;

ii. is screened and supervised to protect clients and staff;

iii. is oriented to facility, job duties, and other pertinent information;

iv. is trained to meet requirements of duties assigned;

v. is given a written job description or written agreement;

vi. is identified as a volunteer;

vii. is trained in privacy measures; and

viii. is required to sign a written confidentiality agreement.

b. The facility shall designate a volunteer coordinator who:

i. has the experience and training to supervise the volunteers and their activities; and

ii. is responsible for selecting, evaluating and supervising the volunteers and their activities.

3. If a CRC utilizes student interns, it shall ensure that each student intern:

a. has current registration with the appropriate Louisiana board when required or educational institution, and is in good standing at all times;

b. provides direct client care utilizing the standards developed by the professional board;

c. provides care only under the direct supervision of an individual authorized in accordance with acceptable standards of practice; and

d. provides only those services for which the student has been properly trained and deemed competent to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:115 (January 2015).

§5361. Personnel Records

A. A CRC shall maintain a personnel file for each employee and direct care staff member in the center. Each record shall contain:

1. the application for employment and/or resume, including contact information and employment history for the preceding five years, if applicable;

2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;

3. any required medical examinations or health screens;

4. evidence of current applicable professional credentials/certifications according to state law or regulations;

5. annual performance evaluations to include evidence of competency in performing assigned tasks;

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment;

7. the staff member's starting and termination dates;

8. proof of orientation, training and in-services;

9. results of criminal background checks, if required;

10. job descriptions and performance expectations;

11. a signed attestation annually by each member of the direct care staff indicating that he/she has not been convicted of or pled guilty or nolo contendere to a crime, other than traffic violations; and

12. written confidentiality agreement signed by the personnel every twelve months.

B. A CRC shall retain personnel files for at least three years following termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:116 (January 2015).

Subchapter F. Admission, Transfer and Discharge

§5367. Admission Requirements

A. A CRC shall not refuse admission to any individual on the grounds of race, national origin, ethnicity or disability.

B. A CRC shall admit only those individuals whose needs, pursuant to the screening, can be fully met by the center.

C. A CRC shall expect to receive individuals who present voluntarily to the unit and/or individuals who are brought to the unit under an OPC, CEC, or PEC.

D. The CRC shall develop and implement policies and procedures for diverting individuals when the CRC is at capacity, that shall include:

1. notifying emergency medical services (EMS), police and the OBH or its designee in the service area;

2. conducting a screening on each individual that presents to the center; and

3. safely transferring the presenting individual to an appropriate provider;

E. Pre-Admission Requirements

1. Prior to admission, the center shall attempt to obtain documentation from the referring emergency room, agency, facility or other source, if available, that reflects the client's condition.

2. The CRC shall conduct a screening on each individual that presents for treatment that:

a. is performed by a RN who may be assisted by other personnel;

b. is conducted within 15 minutes of entering the center;

c. determines eligibility and appropriateness for admission;

d. assesses whether the client is an imminent danger to self or others; and

e. includes the following:

i. taking vital signs;

ii. breath analysis and urine drug screen

iii. brief medical history including assessment of risk for imminent withdrawal; and

iv. clinical assessment of current condition to determine primary medical problem(s) and appropriateness of admission to CRC or transfer to other medical provider;

F. Admission Requirements

1. The CRC shall establish the CRC's admission requirements that include:

a. availability of appropriate physical accommodations;

b. legal authority or voluntary admission; and

c. written documentation that client and/or family if applicable, consents to treatment.

2. The CRC shall develop, implement and comply with admission criteria that, at a minimum, include the following inclusionary and exclusionary requirements:

a. inclusionary: the client is experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and exceeds the abilities and resources of those involved to effectively resolve it;

b. exclusionary: the client is experiencing an exacerbation of a chronic condition that does not meet the inclusionary criteria listed in §5367.F.2.a.

3. If the client qualifies for admission into the CRC, the center shall ensure that a behavioral health assessment is conducted:

a. by an LMHP;

b. within four hours of being received in the unit unless extenuating or emergency circumstances preclude the delivery of this service within this time frame; and

c. includes the following:

i. a history of previous emotional, behavioral and substance use problems and treatment;

ii. a social assessment to include a determination of the need for participation of family members or significant others in the individual's treatment; the social, peer-group, and environmental setting from which the person comes; family circumstances; current living situation; employment history; social, ethnic, cultural factors; and childhood history; current or pending legal issues including charges, pending trial, etc.;

iii. an assessment of the individual's ability and willingness to cooperate with treatment;

iv. an assessment for any possible abuse or neglect; and

v. review of any laboratory results, results of breath analysis and urine drug screens on patients and the need for further medical testing.

4. The CRC shall ensure that a nursing assessment is conducted that is:

a. begun at time of admission and completed within 24 hours; and

b. conducted by a RN with the assistance of other personnel.

5. The center shall ensure that a physical assessment is conducted by an authorized licensed prescriber within 12 hours of admission that includes:

a. a complete medical history;

b. direct physical examination; and

c. documentation of medical problems.

6. The authorized license prescriber, LMHP and/or RN shall conduct a review of the medical and psychiatric records of current and past diagnoses, laboratory results, treatments, medications and dose response, side-effects and compliance with:

a. the review of data reported to clinical director;

b. synthesis of data received is incorporated into treatment plan by clinical director.

G. Client/Family Orientation. Upon admission or as soon as possible, each facility shall ensure that a confidential and efficient orientation is provided to the client and the client's designated representative, if applicable, concerning:

1. visitation;

2. physical layout of the center;

3. safety;

4. center rules; and

5. all other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:116 (January 2015).

§5369. Discharge, Transfer and Referral Requirements

A. The CRC shall develop, implement and comply with policies and procedures that address when and how clients will be discharged and referred or transferred to other providers in accordance with applicable state and federal laws and regulations.

B. Discharge planning shall begin upon admission.

C. The CRC shall ensure that a client is discharged:

1. when the client's treatment goals are achieved, as documented in the client's treatment plan;

2. when the client's issues or treatment needs are not consistent with the services the center is authorized or able to provide; or

3. according to the center's established written discharge criteria.

D. Discharge Plan. Each CRC client shall have a written discharge plan to provide continuity of services that includes:

1. the client's transfer or referral to outside resources, continuing care appointments, and crisis intervention assistance;

2. documented attempts to involve the client and the family or an alternate support system in the discharge planning process;

3. the client's goals or activities to sustain recovery;

4. signature of the client or, if applicable, the client's parent or guardian, with a copy provided to the individual who signed the plan;

5. name, dosage and frequency of client's medications ordered at the time of discharge;

6. prescriptions for medications ordered at time of discharge; and

7. the disposition of the client's possessions, funds and/or medications, if applicable.

E. The discharge summary shall be completed within 30 days and include:

1. the client's presenting needs and issues identified at the time of admission;

2. the services provided to the client;

3. the center's assessment of the client's progress towards goals;

4. the circumstances of discharge; and

5. the continuity of care recommended following discharge, supporting documentation and referral information.

F. Transfer Process. The CRC responsible for the discharge and transfer of the client shall:

1. request and receive approval from the receiving facility prior to transfer;

2. notify the receiving facility prior to the arrival of the client of any significant medical/psychiatric conditions/complications or any other pertinent information that will be needed to care for the client prior to arrival; and

3. transfer all requested client information and documents upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:117 (January 2015).

Subchapter G. Program Operations

§5375. Treatment Services

A. A CRC shall:

1. operate 24 hours per day seven days a week;

2. operate up to 24 licensed beds;

3. provide services to either adults or minors but not both;

4. provide services that include, but are not limited to:

a. emergency screening;

b. assessment;

c. crisis intervention and stabilization;

d. 24 hour observation;

e. medication administration; and

f. referral to the most appropriate and least restrictive setting available consistent with the client's needs.

B. A CRC shall admit clients for an estimated length of stay of 3-7 days. If a greater length of stay is needed, the CRC shall maintain documentation of clinical justification for the extended stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:118 (January 2015).

§5377. Laboratory Services

A. The CRC shall have laboratory services available to meet the needs of its clients, including the ability to:

1. obtain STAT laboratory results as needed at all times;

2. conduct a dipstick urine drug screen; and

3. conduct a breath analysis for immediate determination of blood alcohol level.

B. The CRC shall maintain a CLIA certificate for the laboratory services provided on-site.

C. The CRC shall ensure that all contracted laboratory services are provided by a CLIA clinical laboratory improvement amendment (CLIA) certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:118 (January 2015).

§5379. Pharmaceutical Services and Medication Administration

A. The CRC may provide pharmaceutical services on-site at the center or off-site pursuant to a written agreement with a pharmaceutical provider.

B. All compounding, packaging, and dispensing of medications shall be accomplished in accordance with Louisiana laws and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

C. The CRC shall ensure that a mechanism exists to:

1. provide pharmaceutical services 24 hours per day; and

2. obtain STAT medications, as needed, within an acceptable time frame, at all times.

D. CRCs that utilize off-site pharmaceutical providers pursuant to a written agreement shall have:

1. a physician who assumes the responsibility of procurement and possession of medications; and

2. an area for the secure storage of medication and medication preparation in accordance with Louisiana Board of Pharmacy rules and regulations.

E. A CRC shall maintain:

1. a site-specific Louisiana controlled substance license in accordance with the Louisiana Uniform Controlled Dangerous Substance Act; and

2. a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with title 21 of the *United States Code*.

F. The CRC shall develop, implement and comply with written policies and procedures in accordance with applicable federal, state and local laws and ordinances that govern:

1. the safe administration and handling of all prescription and non-prescription medications;

2. the storage, recording and control of all medications;

3. the disposal of all discontinued and/or expired medications and containers with worn, illegible or missing labels;

4. the use of prescription medications including:

a. when medication is administered, medical monitoring occurs to identify specific target symptoms;

b. a procedure to inform clients, staff, and where appropriate, client's parent(s), legal guardian(s) or designated representatives, of each medication's anticipated results, the potential benefits and side-effects as well as the potential adverse reaction that could result from not taking the medication as prescribed;

c. involving clients and, where appropriate, their parent(s) or legal guardian(s), and designated representatives in decisions concerning medication; and

d. staff training to ensure the recognition of the potential side effects of the medication;

5. the list of abbreviations and symbols approved for use in the facility;

6. recording of medication errors and adverse drug reactions and reporting them to the client's physician or authorized prescriber, and the nurse manager;

7. the reporting of and steps to be taken to resolve discrepancies in inventory, misuse and abuse of controlled substances in accordance with federal and state law;

8. provision for emergency pharmaceutical services;

9. a unit dose system; and

10. procuring and the acceptable timeframes for procuring STAT medications when the medication needed is not available on-site.

G. The CRC shall ensure that:

1. medications are administered by licensed health care personnel whose scope of practice includes administration of medications;

2. any medication is administered according to the order of an authorized licensed prescriber;

3. it maintains a list of authorized licensed prescribers that is accessible to staff at all times;

4. all medications are kept in a locked illuminated clean cabinet, closet or room at temperature controls according to the manufacturer's recommendations, accessible only to individuals authorized to administer medications;

5. medications are administered only upon receipt of written orders, electromechanical facsimile, or verbal orders from an authorized licensed prescriber;

6. all verbal orders are signed by the licensed prescriber within 72 hours;

7. medications that require refrigeration are stored in a refrigerator or refrigeration unit separate from the refrigerators or refrigeration units that store food, beverages, or laboratory specimens;

8. all prescription medication containers are labeled to identify:

a. the client's full name;

b. the name of the medication;

c. dosage;

d. quantity and date dispensed;

e. directions for taking the medication;

f. required accessory and cautionary statements;

g. prescriber's name; and

h. the expiration date;

9. medication errors, adverse drug reactions, and interactions with other medications, food or beverages taken by the client are immediately reported to the client's physician or authorized licensed prescriber, supervising pharmacist and nurse manager with an entry in the client's record;

10. all controlled substances shall be kept in a locked cabinet or compartment separate from other medications;

11. current and accurate records are maintained on the receipt and disposition of controlled substances;

12. controlled substances are reconciled:

a. at least twice a day by staff authorized to administer controlled substances; or

b. by an automated system that provides reconciliation;

13. discrepancies in inventory of controlled substances are reported to the nurse manager and the supervising pharmacist in accordance with federal and state laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:118 (January 2015).

§5381. Transportation

A. The CRC shall establish, implement and comply with policies and procedures to:

1. secure emergency transportation in the event of a client's medical emergency; and

2. provide non-emergent medical transportation to the clients as needed.

B. The facility shall have a written agreement with a transportation service in order to provide non-emergent transport services needed by its clients that shall require all vehicles used to transport CRC clients are:

1. maintained in a safe condition;

2. properly licensed and inspected in accordance with state law;

3. operated at a temperature that does not compromise the health, safety and needs of the client;

4. operated in conformity with all applicable motor vehicle laws;

5. current liability coverage for all vehicles used to transport clients;

6. all drivers of vehicles that transport CRC clients are properly licensed to operate the class of vehicle in accordance with state law; and

7. the ability to transport non-ambulatory clients in appropriate vehicles if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:119 (January 2015).

§5383. Food and Diet

A. The CRC shall ensure that:

1. all dietary services are provided under the direction of a Louisiana licensed and registered dietician either directly or by written agreement;

2. menus are approved by the registered dietician;

3. meals are of sufficient quantity and quality to meet the nutritional needs of clients, including religious and dietary restrictions;

4. meals are in accordance with Federal Drug Administration (FDA) dietary guidelines and the orders of the authorized licensed prescriber;

5. at least three meals plus an evening snack are provided daily with no more than 14 hours between any two meals;

6. meals are served in a manner that maintains the safety and security of the client and are free of identified contraband;

7. all food is stored, prepared, distributed, and served under safe and sanitary conditions in accordance with the *Louisiana Sanitary Code*;

8. all equipment and utensils used in the preparation and serving of food are properly cleaned, sanitized and

stored in accordance with the *Louisiana Sanitary Code*; and

9. if meals are prepared on-site, they are prepared in an OPH approved kitchen.

B. The CRC may provide meal service and preparation pursuant to a written agreement with an outside food management company. If provided pursuant to a written agreement, the CRC shall:

1. maintain responsibility for ensuring compliance with this Chapter;

2. provide written notice to HSS and OPH within 10 calendar days of the effective date of the contract;

3. ensure that the outside food management company possesses a valid OPH retail food permit and meets all requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the special requirements for highly susceptible populations as promulgated in the *Louisiana Sanitary Code* provisions governing food display and service for retail food establishments (specifically LAC 51:XXIII.1911 as amended May 2007); and

4. ensure that the food management company employs or contracts with a licensed and registered dietician who serves the center as needed to ensure that the nutritional needs of the clients are met in accordance with the authorized licensed prescriber's orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:119 (January 2015).

Subchapter H. Client Rights

§5389. General Provisions

A. The CRC shall develop, implement and comply with policies and procedures that:

1. protect its clients' rights;

2. respond to questions and grievances pertaining to these rights;

3. ensure compliance with clients' rights enumerated in R.S. 28:171; and

4. ensure compliance with minors' rights enumerated in the *Louisiana Children's Code*.

B. A CRC's client and, if applicable, the client's parent(s) or legal guardian or chosen designated representative, have the following rights:

1. to be informed of the client's rights and responsibilities at the time of or shortly after admission;

2. to have a family member, chosen representative and/or his or her own physician notified of admission at the client's request to the CRC;

3. to receive treatment and medical services without discrimination based on race, age, religion, national origin, gender, sexual orientation, disability, marital status, diagnosis, ability to pay or source of payment;

4. to be free from abuse, neglect, exploitation and harassment;

5. to receive care in a safe setting;

6. to receive the services of a translator or interpreter, if applicable, to facilitate communication between the client and the staff;

7. to be informed of the client's own health status and to participate in the development, implementation and updating of the client's treatment plan;

8. to make informed decisions regarding the client's care in accordance with federal and state laws and regulations;

9. to consult freely and privately with the client's legal counsel or to contact an attorney at any reasonable time;

10. to be informed, in writing, of the policies and procedures for initiation, review and resolution of grievances or client complaints;

11. to submit complaints or grievances without fear of reprisal;

12. to have the client's information and medical records, including all computerized medical information, kept confidential in accordance with federal and state statutes and rules/regulations;

13. to be provided indoor and/or outdoor recreational and leisure opportunities;

14. to be given a copy of the center's rules and regulations upon admission or shortly thereafter;

15. to receive treatment in the least restrictive environment that meets the client's needs;

16. to be subject to the use of restraint and/or seclusion only in accordance with federal and state law, rules and regulations;

17. to be informed of all estimated charges and any limitations on the length of services at the time of admission or shortly thereafter;

18. to contact DHH at any reasonable time;

19. to obtain a copy of these rights as well as the address and phone number of DHH and the Mental Health Advocacy Service at any time; and

20. to be provided with personal hygiene products, including but not limited to, shampoo, deodorant, toothbrush, toothpaste, and soap, if needed.

C. A copy of the clients' right shall be posted in the facility and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:120 (January 2015).

§5391. Grievances

A. The facility shall develop, implement and comply with a written grievance procedure for clients designed to allow clients to submit a grievance without fear of retaliation. The procedure shall include, but not be limited to:

1. process for filing a grievance;

2. a time line for responding to the grievance;

3. a method for responding to a grievance; and

4. the staff responsibilities for addressing and resolving grievances.

B. The facility shall ensure that:

1. the client and, if applicable, the client's parent(s) or legal guardian(s), is aware of and understands the grievance procedure; and

2. all grievances are addressed and resolved to the best of the center's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:120 (January 2015).

Subchapter I. Physical Environment

§5397. Interior Space

A. The CRC shall:

1. have a physical environment that protects the health, safety and security of the clients;

2. have routine maintenance and cleaning programs in all areas of the center;

3. be well-lit, clean, and ventilated;

4. conduct a risk assessment of each client and the physical environment of the facility in order to ensure the safety and well-being of all clients admitted to the facility;

5. maintain its physical environment, including, but not limited to, all equipment, fixtures, plumbing, electrical, and furnishings, in good order and safe condition in accordance with manufacturer's recommendations;

6. maintain heating, ventilation and cooling systems in good order and safe condition to ensure a comfortable environment; and

7. ensure that electric receptacles in client care areas are tamper-resistant or equipped with ground fault circuit interrupters.

B. Common Area. The CRC shall have designated space:

1. to be used for group meetings, dining, visitation, leisure and recreational activities;

2. that is at least 25 square feet per client and no less than 150 square feet exclusive of sleeping areas, bathrooms, areas restricted to staff and office areas; and

3. that contains tables for eating meals.

C. Bathrooms

1. Each bathroom to be used by clients shall contain:

a. a lavatory with:

i. paper towels or an automatic dryer;

ii. a soap dispenser with soap for individual use; and

iii. a wash basin with hot and cold running water;

b. tubs and/or showers that:

i. have hot and cold water;

ii. have slip proof surfaces; and

iii. allow for individual privacy;

c. toilets:

i. an adequate supply of toilet paper;

ii. with seats; and

iii. that allow for individual privacy;

d. a sink, tub or shower and toilet for the number of clients and in accordance with the *Louisiana Sanitary Code*;

e. shatterproof mirrors secured to the walls at convenient heights;

f. plumbing, piping, ductwork, and that are recessed or enclosed in order to be inaccessible to clients; and

g. other furnishings necessary to meet the clients' basic hygienic needs.

2. A CRC shall have at least one separate toilet and lavatory facility for the staff.

D. Sleeping Areas and Bedroom(s)

1. A CRC that utilizes a sleeping area for multiple clients shall:

a. ensure that the sleeping area has at least 60 square feet per bed of clear floor area and does not contain or utilize bunk beds; and

b. shall maintain at least one separate bedroom.

2. Bedrooms. A CRC that utilizes individual bedrooms shall ensure that each bedroom:

a. accommodates no more than one client; and

b. has at least 80 square feet of clear floor area.

3. The CRC shall ensure that each client:

a. has sufficient separate storage space for clothing, toilet articles and other personal belongings of clients;

b. has sheets, pillow, bedspread, towels, washcloths and blankets that are:

i. intact and in good repair;

ii. systematically removed from use when no longer usable;

iii. clean;

iv. provided as needed or when requested unless the request is unreasonable;

c. is given a bed for individual use that:

i. is no less than 30 inches wide;

ii. is of solid construction;

iii. has a clean, comfortable, impermeable, nontoxic and fire retardant mattress; and

iv. is appropriate to the size and age of the client.

E. Administrative and Staff Areas

1. The CRC shall maintain a space that is distinct from the client common areas that serves as an office for administrative functions.

2. The CRC shall have a designated space for nurses and other staff to complete tasks, be accessible to clients and to observe and monitor client activity within the unit.

F. Counseling and Treatment Area

1. The CRC shall have a designated space to allow for private physical examination that is exclusive of sleeping areas and common spaces.

2. The CRC shall have a designated space to allow for private and small group discussions and counseling sessions between individual clients and staff that is exclusive of sleeping areas and common space.

3. The CRC may utilize the same space for the counseling area and examination area.

G. Seclusion Room

1. The CRC shall have at least one seclusion room that:

a. is for no more than one client; and

b. allows for continual visual observation and monitoring of the client either:

i. directly; or

ii. by a combination of video and audio;

c. has a monolithic ceiling;

d. is a minimum of 80 square feet; and

e. contains a stationary restraint bed that is secure to the floor;

f. flat walls that are free of any protrusions with angles;

g. does not contain electrical receptacles.

H. Kitchen

1. If a CRC prepares meals on-site, the CRC shall have a full service kitchen that:

a. includes a cooktop, oven, refrigerator, freezer, hand washing station, storage and space for meal preparation;

b. complies with OPH regulations;

c. has the equipment necessary for the preparation, serving, storage and clean-up of all meals regularly served to all of the clients and staff;

d. contains trash containers covered and made of metal or United Laboratories-approved plastic; and

e. maintains the sanitation of dishes.

2. A CRC that does not provide a full service kitchen accessible to staff 24 hours per day shall have a nourishment station or a kitchenette, restricted to staff only, in which staff may prepare nourishments for clients, that includes:

a. a kitchen sink;

b. a work counter;

c. a refrigerator;

d. storage cabinets;

e. equipment for preparing hot and cold nourishments between scheduled meals; and

f. space for trays and dishes used for non-scheduled meal service.

3. A CRC may utilize ice making equipment if the ice maker:

a. is self-dispensing; or

b. is in an area restricted to staff only.

I. Laundry

1. The CRC shall have an automatic washer and dryer for use by staff when laundering clients' clothing.

2. The CRC shall have:

a. provisions to clean and launder soiled linen, other than client clothing, either on-site or off-site by written agreement;

b. a separate area for holding soiled linen until it is laundered; and

c. a clean linen storage area.

J. Storage:

1. the CRC shall have separate and secure storage areas that are inaccessible to clients for the following:

a. client possessions that may not be accessed during their stay;

b. hazardous, flammable and/or combustible materials; and

2. records and other confidential information.

K. Furnishings

1. The CRC shall ensure that its furnishings are:

a. designed to suit the size, age and functional status of the clients;

b. in good repair;

c. clean;

d. promptly repaired or replaced if defective, run-down or broken.

L. Hardware, Fixtures and other Protrusions

1. If grab bars are used, the CRC shall ensure that the space between the bar and the wall shall be filled to prevent a cord from being tied around it.

2. All hardware as well as sprinkler heads, lighting fixtures and other protrusions shall be:

a. recessed or of a design to prohibit client access; and

b. tamper-resistant.

3. Towel bars, shower curtain rods, clothing rods and hooks are prohibited.

M. Ceilings

1. The CRC shall ensure that the ceiling is:

a. no less than 7.5 feet high and secured from access; or

b. at least 9 feet in height; and

c. all overhead plumbing, piping, duct work or other potentially hazardous elements shall be concealed above the ceiling.

N. Doors and Windows

1. All windows shall be fabricated with laminated safety glass or protected by polycarbonate, laminate or safety screens.

2. Door hinges shall be designed to minimize points for hanging.

3. Except for specifically designed anti-ligature hardware, door handles shall point downward in the latched or unlatched position.

4. All hardware shall have tamper-resistant fasteners.

5. The center shall ensure that outside doors, windows and other features of the structure necessary for safety and comfort of individuals:

a. are secured for safety;

b. prohibit clients from gaining unauthorized egress;

c. prohibit an outside from gaining unauthorized ingress;

d. if in disrepair, not accessible to clients until repaired; and

e. repaired as soon as possible.

6. The facility shall ensure that all closets, bedrooms and bathrooms for clients that are equipped with doors do not have locks and can be readily opened from both sides.

O. Smoking

1. The CRC shall prohibit smoking in the interior of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:121 (January 2015).

§5399. Exterior Space Requirements

A. The CRC shall maintain all exterior areas to prevent elopement, injury, suicide and the introduction of contraband, and shall maintain a perimeter security system designed to monitor and control visitor access and client egress.

B. The facility shall maintain all exterior areas and structures of the facility in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall ensure the following:

1. garbage stored outside is secured in non-combustible, covered containers and are removed on a regular basis;

2. trash collection receptacles and incinerators are separate from any area accessible to clients and located as to avoid being a nuisance;

3. unsafe areas, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads are fenced or have natural barriers to protect clients;

4. fences that are in place are in good repair;

5. exterior areas are well lit; and

6. the facility has appropriate signage that:

a. is visible to the public;

b. indicates the facility's legal or trade name;

c. clearly states that the CRC provides behavioral health services only; and

d. indicates the center is not a hospital or emergency room.

D. A CRC with an outdoor area to be utilized by its clients shall ensure that the area is safe and secure from access and egress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:122 (January 2015).

Chapter 54. Crisis Receiving Centers

Subchapter J. Safety and Emergency Preparedness

§5401. General Safety Provisions

A. The CRC shall provide additional supervision when necessary to provide for the safety of all clients.

B. The CRC shall:

1. prohibit weapons of any kind on-site;

2. prohibit glass, hand sanitizer, plastic bags in client-care areas;

3. ensure that all poisonous, toxic and flammable materials are:

a. maintained in appropriate containers and labeled as to the contents;

b. securely stored in a locked cabinet or closet;

c. are used in such a manner as to ensure the safety of clients, staff and visitors; and

d. maintained only as necessary;

4. ensure that all equipment, furnishing and any other items that are in a state of disrepair are removed and inaccessible to clients until replaced or repaired; and

5. ensure that when potentially harmful materials such as cleaning solvents and/or detergents are used, training is provided to the staff and they are used by staff members only.

C. The CRC shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

D. The CRC shall simulate fire drills and other emergency drills at least once a quarter while maintaining client safety and security during the drills.

E. Required Inspections. The CRC shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations.

F. The CRC shall have 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; and

4. fire control, evacuation planning and other emergency drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:123 (January 2015).

§5403. Infection Control

A. The CRC shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases.

B. The CRC shall have an active Infection Control Program that requires:

1. reporting of infectious disease in accordance with OPH guidelines;

2. monitoring of:

a. the spread of infectious disease;

b. hand washing;

c. staff and client education; and

d. incidents of specific infections in accordance with OPH guidelines;

3. corrective actions;

4. a designated infection control coordinator who:

a. has education and/or experience in infection control;

b. develops and implements policies and procedures governing the infection control program;

c. takes universal precautions; and

d. strictly adheres to all sanitation requirements;

5. the CRC shall maintain a clean and sanitary environment and shall ensure that:

a. supplies and equipment are available to staff;

b. there is consistent and constant monitoring and cleaning of all areas of the facility;

c. the methods used for cleaning, sanitizing, handling and storing of all supplies and equipment prevent the transmission of infection;

d. directions are posted for sanitizing both kitchen and bathroom and laundry areas;

e. showers and bathtubs are to be sanitized by staff between client usage;

f. clothing belonging to clients must be washed and dried separately from the clothing belonging to other clients; and

g. laundry facilities are used by staff only;

h. food and waste are stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests.

C. The CRC may enter into a written contract for housekeeping services necessary to maintain a clean and neat environment.

D. Each CRC shall have an effective pest control plan.

E. After discharge of a client, the CRC shall:

1. clean the bed, mattress, cover, bedside furniture and equipment;

2. ensure that mattresses, blankets and pillows assigned to clients are intact and in a sanitary condition; and

3. ensure that the mattress, blankets and pillows used for a client are properly sanitized before assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:123 (January 2015).

§5405. Emergency Preparedness

A. The CRC shall have a written emergency preparedness plan to:

1. maintain continuity of the center's operations in preparation for, during and after an emergency or disaster; and

2. manage the consequences of all disasters or emergencies that disrupt the center's ability to render care and treatment, or threaten the lives or safety of the clients.

B. The CRC shall:

1. post exit diagrams describing how to clear the building safely and in a timely manner;

2. have a clearly labeled and legible master floor plan(s) that indicates:

a. the areas in the facility that are to be used by clients as shelter or safe zones during emergencies;

b. the location of emergency power outlets and whether they are powered;

c. the locations of posted, accessible, emergency information; and

d. what will be powered by emergency generator(s), if applicable;

3. train its employees in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

C. The CRC's emergency preparedness plan shall include the following information, at a minimum:

1. if the center evacuates, the plan shall include:

a. provisions for the evacuation of each client and delivery of essential services to each client;

b. the center's method of notifying the client's family or caregiver, if applicable, including:

i. the date and approximate time that the facility or client is evacuating;

ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and

iii. a telephone number that the family or responsible representative may call for information regarding the client's evacuation;

c. provisions for ensuring that supplies, medications, clothing and a copy of the treatment plan are sent with the client, if the client is evacuated;

d. the procedure or methods that will be used to ensure that identification accompanies the client including:

i. current and active diagnosis;

ii. medication, including dosage and times administered;

iii. allergies;

iv. special dietary needs or restrictions; and

v. next of kin, including contact information if applicable;

e. transportation or arrangements for transportation for an evacuation;

2. provisions for staff to maintain continuity of care during an emergency as well as for distribution and assignment of responsibilities and functions;

3. the delivery of essential care and services to clients who are housed in the facility or by the facility at another location, during an emergency or disaster;

4. the determination as to when the facility will shelter in place and when the facility will evacuate for a disaster or emergency and the conditions that guide these determinations in accordance with local or parish OSHEP;

5. if the center shelters in place, provisions for seven days of necessary supplies to be provided by the center prior to the emergency, including drinking water or fluids and non-perishable food.

D. The center shall:

1. follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency;

2. if the state, parish or local OHSEP orders a mandatory evacuation of the parish or the area in which the agency is serving, shall ensure that all clients are evacuated according to the facility's emergency preparedness plan;

3. not abandon a client during a disaster or emergency;

4. review and update its emergency preparedness plan at least once a year;

5. cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested;

6. monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials;

7. upon request by the department, submit a copy of its emergency preparedness plan for review;

8. upon request by the department, submit a written summary attesting to how the plan was followed and executed to include, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:124 (January 2015).

§5407. Inactivation of License due to a Declared Disaster or Emergency

A. A CRC located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the center:

1. submits written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the CRC has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the CRC intends to resume operation as a CRC in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another facility; and

e. lists the clients and the location of the discharged or transferred clients;

2. resumes operating as a CRC in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil fines; and

4. continues to submit required documentation and information to the department.

B. Upon receiving a completed request to inactivate a CRC license, the department shall issue a notice of inactivation of license to the CRC.

C. In order to obtain license reinstatement, a CRC with a department-issued notice of inactivation of license shall:

1. submit a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening that includes:

a. the anticipated date of opening, and a request to schedule a licensing survey;

b. a completed licensing application and other required documents with licensing fees, if applicable; and

c. written approvals for occupancy from OSFM and OPH recommendation for license.

D. Upon receiving a completed written request to reinstate a CRC license and other required documentation, the department shall conduct a licensing survey.

E. If the CRC meets the requirements for licensure and the requirements under this Subsection, the department shall issue a notice of reinstatement of the center's license.

F. During the period of inactivation, the department prohibits:

1. a change of ownership (CHOW) in the CRC; and

2. an increase in the licensed capacity from the CRC's licensed capacity at the time of the request to inactivate the license.

G. The provisions of this Section shall not apply to a CRC which has voluntarily surrendered its license.

H. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the CRC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:124 (January 2015).

Kathy H. Kliebert
Secretary

1501#061

RULE

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice Waiver
(LAC 50:XXI.11107, 11303, 11527, 11529, 11703, 11901, 11905, and 12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.11107, §11303, §§11527-11529, §11703 and Chapters 119-121 under the Medical Assistance Program as authorized by R.S. 36:254 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 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 9. Children's Choice
Chapter 111. General Provisions
§11107. Allocation of Waiver Opportunities

A. The order of entry in the children's choice waiver is first come, first served from a statewide list arranged by date of application for the developmental disabilities request for services registry for the new opportunities waiver (NOW). Families shall be given a choice of accepting an opportunity in the children's choice waiver or remaining on the DDRFSR for the NOW.

A.1. - B.1.b. …

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the local governing entity (LGE) as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. ...

b. be designated by the LGE as meeting priority level 1 or 2 criteria;

c. - e. …

2. Each LGE shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria.

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. - iii. …

iv. death or inability of the caregiver to continue care due to his/her own age or health; or

v. …

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of his/her independence or productivity.

3. …

4. Each LGE shall have a specific number of these opportunities designated to them for allocation to waiver participants.

5. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular LGE for another opportunity to be offered.

6. …

D. The Office for Citizens with Developmental Disabilities (OCDD) has the responsibility to monitor the utilization of children's choice waiver opportunities. At the discretion of the OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of individuals with developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 40:539, 540 (March 2014), LR 41:125 (January 2015).

Chapter 113. Service

§11303. Service Definitions

A. - E.1. …

2. Family training must be prior approved by the LGE and incorporated into the approved plan of care.

3. - 4. …

F. Family support services are services that enable a family to keep their child or family member at home, thereby enhancing family functioning. Services may be provided in the home or outside of the home in settings such as after school programs, summer camps, or other places as specified in the approved plan of care.

1. Family support includes:

a. assistance and prompting with eating, bathing, dressing, personal hygiene, and essential housekeeping incidental to the care of the child, rather than the child's family. The preparation of meals is included, but not the cost of the meals themselves; and

b. assistance with participating in the community, including activities to maintain and strengthen existing informal networks and natural supports. Providing transportation to these activities is also included.

2. Family members who provide family support services must meet the same standards of service, training requirements and documentation requirements as caregivers who are unrelated to the participant. Services cannot be provided by the following individuals:

a. legally responsible relatives (spouses, parents or step-parents, foster parents, or legal guardians); or

b. any other individuals who live in the same household with the waiver participant.

3. - 3.b. Repealed.

G. - G.7.j. …

H. Aquatic Therapy

1. Aquatic therapy uses the resistance of water to rehabilitate a participant with a chronic illness, poor or lack of muscle tone or a physical injury/disability.

2. Aquatic therapy is not for participants who have fever, infections and are bowel/ bladder incontinent.

3. Repealed.

I. Art Therapy

1. Art therapy is used to increase awareness of self and others; cope with symptoms, stress and traumatic experiences; enhance cognitive abilities; and as a mode of communication and enjoyment of the life-affirming pleasure of making art.

2. Art therapy is the therapeutic use of art by people who experience illness, trauma, emotional/behavioral or mental health problems; by those who have learning or physical disabilities, life-limiting conditions, brain injuries or neurological conditions and/or challenges in living; and by people who strive to improve personal development.

J. Music Therapy

1. Music therapy services help participants improve their cognitive functioning, motor skills, emotional and affective development, behavior and social skills and quality of life.

2. Repealed.

K. Sensory Integration

1. Sensory integration is used to improve the way the brain processes and adapts to sensory information, as opposed to teaching specific skills. Sensory integration involves activities that provide vestibular, proprioceptive and tactile stimuli which are selected to match specific sensory processing deficits of the child.

L. Hippotherapy/Therapeutic Horseback Riding

1. Hippotherapy/therapeutic horseback riding are services used to promote the use of the movement of the horse as a treatment strategy in physical, occupational and speech-language therapy sessions for people living with disabilities.

2. Hippotherapy improves muscle tone, balance, posture, coordination, motor development as well as motor planning that can be used to improve sensory integration skills and attention skills.

a. Specially trained therapy professionals evaluate each potential participant on an individual basis to determine the appropriateness of including hippotherapy as a treatment strategy.

b. Hippotherapy requires therapy sessions that are one-on-one with a licensed physical therapist, speech therapist or occupational therapist who works closely with the horse professional in developing treatment strategies. The licensed therapist must be present during the hippotherapy sessions.

c. Hippotherapy must be ordered by a physician with implementation of service, treatment strategies and goals developed by a licensed therapist. Services must be included in the participant's plan of care.

3. Therapeutic horseback riding teaches riding skills and improves neurological function and sensory processing.

a. Therapeutic horseback riding must be ordered by a physician with implementation of service, treatment strategies and goals developed by a licensed therapist. Services must be included in the participant's plan of care.

M. Housing Stabilization Transition Services

1. Housing stabilization transition services enable participants who are transitioning into a permanent

supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the participant is in an institution and preparing to exit the institution using the waiver.

2. Housing stabilization transition services include the following components:

a. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

i. access to housing;

ii. meeting the terms of a lease;

iii. eviction prevention;

iv. budgeting for housing/living expenses;

v. obtaining/accessing sources of income necessary for rent;

vi. home management;

vii. establishing credit; and

viii. understanding and meeting the obligations of tenancy as defined in the lease terms;

b. assisting the participant to view and secure housing as needed, which may include arranging for and providing transportation;

c. assisting the participant to secure supporting documents/records, completing/submitting applications, securing deposits, and locating furnishings;

d. developing an individualized housing support plan based upon the housing assessment that:

i. includes short and long term measurable goals for each issue;

ii. establishes the participant's approach to meeting the goal; and

iii. identifies where other provider(s) or services may be required to meet the goal;

e. participating in the development of the plan of care and incorporating elements of the housing support plan; and

f. exploring alternatives to housing if permanent supportive housing is unavailable to support completion of the transition.

3. Housing stabilization transition services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit, or who are linked for the state of Louisiana permanent supportive housing selection process.

a. Repealed.

4. Participants may not exceed 165 combined units of this service and housing stabilization services.

a. Exceptions to exceed the 165 unit limit may be made only with written approval from the Office for Citizens with Developmental Disabilities.

N. Housing Stabilization Services

1. Housing stabilization services enable waiver participants to maintain their own housing as set forth in the participant's approved plan of care. Services must be provided in the home or a community setting.

2. Housing stabilization services include the following components:

a. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

i. - vii. …

b. participating in the development of the plan of care and incorporating elements of the housing support plan;

c. developing an individualized housing stabilization service provider plan based upon the housing assessment that includes short and long term measurable goals for each issue, establishes the participant's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal;

d. providing supports and interventions according to the individualized housing support plan (If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator.);

i. - iii. Repealed.

e. providing ongoing communication with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager;

f. updating the housing support plan annually or as needed due to changes in the participant's situation or status; and

g. providing supports to retain housing or locate and secure housing to continue community-based supports if the participant's housing is placed at risk (e.g., eviction, loss of roommate or income); this includes locating new housing, sources of income, etc.

3. Housing stabilization services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit.

4. Participants may not exceed 165 combined units of this service and housing stabilization transition services.

a. ...

O. - O.4.a. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, amended LR 36:324 (February 2010), LR 39:2498 (September 2013), LR 40:67 (January 2014), LR 41:126 (January 2015).

Chapter 115. Providers

Subchapter B. Provider Requirements

§11527. Direct Service Providers

A. - A.1.d. …

e. All services must be performed and completed during the current approved plan of care year. Services that are not completed by the end of the current approved plan of care year will be voided and deemed as non-billable. Services cannot carry over into the next plan of care year.

4. - 7. …

8. The agency shall document that its employees and the employees of subcontractors do not have a criminal record as defined in 42 CFR 441.404(b). Providers of community supported living arrangement services must:

a. not use individuals who have been convicted of child abuse, neglect, or mistreatment, or of a felony involving physical harm to an individual; and

8.b. - 12. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1985 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 41:127 (January 2015).

§11529. Professional Services Providers

A. Professional services are direct services to participants, based on need, that may be utilized to increase the participant's independence, participation and productivity in the home and community. Service intensity, frequency and duration will be determined by individual need. Professional services include the following:

1. aquatic therapy;
2. art therapy;
3. music therapy;
4. sensory integration; and
5. hippotherapy/therapeutic horseback ridng.
6. Repealed.

B. - F. …

G. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her plan of care.

H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 41:128 (January 2015).

Chapter 117. Crisis Provisions

§11703. Crisis Designation Criteria

A. - A.2. …

3. the child is committed to the custody of the Department of Health and Hospitals (DHH) by the court; or

A.4. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1986 (September 2002), amended LR 29:704 (May 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2503 (September 2013), LR 41:128 (January 2015).

Chapter 119. Noncrisis Provisions

§11901. General Provisions

A. Restoring the participant to the DDRFSR under noncrisis provisions will allow that individual to be placed in the next available waiver opportunity (slot) that will provide the appropriate services, provided the participant is still eligible when a slot becomes available. The fact that the participant is being restored to the DDRFSR does not require that the department immediately offer him/her a waiver slot if all slots are filled or to make a slot available to this participant for which another participant is being evaluated, even though that other participant was originally placed on the DDRFSR on a later date. Waiver services will not be terminated as a result of a participant's name being restored to the registry.

B. …

C. In the event that the waiver eligibility, other than for the developmental disabilities waiver, of a person who elected or whose legal representative elected that he/she receive services under the children's choice waiver is terminated based on inability to assure health and welfare of the waiver participant, the department will restore him/her to the DDRFSR for the developmental disabilities waiver in the date order of the original request.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1986 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2503 (September 2013), LR 41:128 (January 2015).

§11905. Determination Responsibilities and Appeals

A. The LGE shall have the responsibility for making the determinations as to the matters set forth in this Chapter 119. Persons who have elected or whose legal representatives have elected that they receive services under the children's choice waiver have the right to appeal any determination of the department as to matters set forth in this Chapter 119, under the regulations and procedures applicable to Medicaid fair hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1987 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2504 (September 2013), LR 41:128 (January 2015).

Chapter 121. Reimbursement

§12101. Reimbursement Methodology

A. - B. …

1. Family support, crisis support, center-based respite, aquatic therapy, art therapy, music therapy, sensory integration, and hippotherapy/therapeutic horseback riding services shall be reimbursed at a flat rate per 15-minute unit of service, which covers both service provision and administrative costs.

2. - 4. …

a. Effective February 9, 2007, an hourly wage enhancement payment in the amount of $2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide family support services to children's choice participants.

b. Effective May 20, 2007, an hourly wage enhancement payment in the amount of $2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide center-based respite services to children's choice participants.

B.4.c. - D.1.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:2504 (September 2013), LR 40:68 (January 2014), LR 41:128 (January 2015).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Secretary

1501#062

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Hospice Services (LAC 50:XV.Chapters 33-43)

The Department of Health and Hospitals, Bureau of Health Services Financing, has amended LAC 50:XV.Chapters 33-43 under the Medical Assistance Program as authorized by R.S. 36:254 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 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 3. Hospice

Chapter 33. Provider Participation

§3301. Conditions for Participation

A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

1.c. - 2. Repealed.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:129 (January 2015).

Chapter 35. Recipient Eligibility

§3501. Election of Hospice Care

A. - B. …

1. The election must be filed by the eligible individual or by a person authorized by law (legal representative) to consent to medical treatment for such individual.

a. A legal representative does not have the authority to elect, revoke, or appeal the denial of hospice services if the recipient is able to and wishes to convey a contrary choice.

B.2. - F. …

G. Election Statement Requirements. The election statement must include:

1. …

2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;

3. - 4. …

5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;

2. does not revoke the election under the provisions of §3505; and

3. is not discharged from hospice in accordance with §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:129 (January 2015).

§3503. Waiver of Payment for Other Services

A. Individuals who are 21 and over may be eligible for additional personal care services as defined in the Medicaid state plan. Services furnished under the personal care services benefit may be used to the extent that the hospice provider would routinely use the services of the hospice patient's family in implementing the patient's plan of care. The hospice provider must provide services to the individual that are comparable to the services they received through Medicaid prior to their election of hospice. These services include, but are not limited to:

1. pharmaceutical and biological services;

2. durable medical equipment; and

a. - c. Repealed.

3. any other services permitted by federal law;

4. the services listed in §3503.A.1-3 are for illustrative purposes only. The hospice provider is not exempt from providing care if an item or category is not listed.

B. Individuals under age 21 who are approved for hospice may continue to receive curative treatments for their terminal illness; however, the hospice provider is responsible to coordinate all curative treatments related to the terminal illness.

1. *Curative Treatments*—medical treatment and therapies provided to a patient with the intent to improve

symptoms and cure the patient's medical problem. Antibiotics, chemotherapy, a cast for a broken limb are examples of curative care.

2. Curative care has as its focus the curing of an underlying disease and the provision of medical treatments to prolong or sustain life.

3. The hospice provider is responsible to provide durable medical equipment or contract for the provision of durable medical equipment. Personal care services, extended home health, and pediatric day health care must be coordinated with hospice services pursuant to §3705.C.

C. Individuals who elect hospice services may also receive early and periodic screening, diagnosis and treatment (EPSDT) personal care services (PCS) concurrently. The hospice provider and the PCS provider must coordinate services and develop the patient's plan of care as set forth in §3705.

D. The hospice provider is responsible for making a daily visit to all clients under the age of 21 and for the coordination of care to assure there is no duplication of services. The daily visit is not required if the person is not in the home due to hospitalization or inpatient respite or inpatient hospice stays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:129 (January 2015).

§3505. Revoking the Election of Hospice Care/Discharge

A. - A.4.b. …

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any time file an election, in accordance with §3501, for any other election period that is still available to the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:130 (January 2015).

Chapter 37. Provider Requirements

§3701. Requirements for Coverage

A. To be covered, a certification of terminal illness must be completed as set forth in §3703, the election of hospice care form must be completed in accordance with §3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the certificate of terminal illness.

B. Prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:130 (January 2015).

§3703. Certification of Terminal Illness

A. …

1. For the first 90-day period of hospice coverage, the hospice must obtain a verbal certification no later than two calendar days after hospice care is initiated. If the verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within 10 calendar days following the initiation of hospice care. The written certification and notice of election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day certification, i.e., the date all certification forms are obtained.

a. - c. Repealed.

2. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2.a. - 4. Repealed.

B. Face-to-Face Encounter

1. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The face-to-face encounter must occur no more than 30 calendar days prior to the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

2. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

C. Content of Certifications

1. Certifications shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.

2. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

3. Written clinical information and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be based on the physician's clinical judgment regarding the normal course of the individual's illness filed in the medical record with the written certification, as set forth in §3703.C.

4. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms, or as an addendum to the certification/recertification forms:

a. if the physician includes an addendum to the certification and recertification forms, it shall include, at a minimum:

i. the patient's name;

ii. physician's name;

iii. terminal diagnosis(es);

iv. prognosis; and

v. the name and signature of the IDG member making the referral;

b. the narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients;

c. the narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted;

d. prognosis; and

e. the name and signature of the IDG member taking the referral.

5. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

D. Sources of Certification

1. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

a. the hospice's medical director or physician member of the hospice's interdisciplinary group; and

b. the individual's referring physician.

i. The referring physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

ii. The referring physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

2. For subsequent periods, the only requirement is certification by either the medical director of the hospice or the physician member of the hospice interdisciplinary group.

E. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:130 (January 2015).

§3705. Plan of Care

A. - B. …

C. When developing the plan of care (POC), the hospice provider must consult with, and collaborate with the recipient, his/her caregiver, and his/her long-term personal care services provider, and if the recipient is under age 21, his/her extended home nursing provider and/or pediatric day health care provider. If the recipient is receiving any of these services at the time of admission to hospice, the hospice provider must ensure that the POC clearly and specifically details the services and tasks, along with the frequency, to be performed by the non-hospice provider(s), as well as the services and tasks, along with the frequency, that are to be performed by the hospice provider to ensure that services are non-duplicative and that the recipient's needs are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:131 (January 2015).

Chapter 39. Covered Services

§3901. Medical and Support Services

A. - A.11.b.iv. …

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. General Inpatient Care Day. A general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility that meets the standards as provided in 42 CFR §418.98(a) and for the purpose of pain control or acute or chronic symptom management which cannot be managed in other settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:131 (January 2015).

Chapter 41. Prior Authorization

§4101. Prior Authorization of Hospice Services

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. The Medicare criteria found in local coverage determination (LCD) hospice determining terminal status (L32015) will be used in analyzing information provided by the hospice to determine if the patient meets clinical requirements for this program.

2. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice recipient, recipient's legal representative, and nursing facility, if appropriate.

C. Reconsideration. Claims will only be paid from the date of the hospice notice of election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization request is received 10 days or more after the date on the hospice notice of election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

D. Appeals. If the recipient does not agree with the denial of a hospice prior authorization request, the recipient, the recipient's legal representative, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:131 (January 2015).

Chapter 43. Reimbursement

§4303. Levels of Care for Payment

A. - B.3. …

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. …

2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:132 (January 2015).

§4305. Hospice Payment Rates

A. - A.2. …

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

b. - d.ii. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:132 (January 2015).

§4307. Payment for Long Term Care Residents

A. …

1. who is residing in a nursing facility or intermediate care facility for persons with intellectual disabilities (ICF/ID);

2. who would be eligible under the state plan for nursing facility services or ICF/ID services if he or she had not elected to receive hospice care;

3. …

4. for whom the hospice agency and the nursing facility or ICF/ID have entered into a written agreement in accordance with the provisions set forth in the licensing standards for hospice agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), LR 41:132 (January 2015).

§4309. Limitation on Payments for Inpatient Care

A. …

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient days for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:132 (January 2015).

Kathy H. Kliebert
Secretary

1501#063

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Supplemental Payments
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§953. Acute Care Hospitals

A. - S. ...

T. Effective for dates of service on or after November 20, 2013, supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be annual. The amount appropriated for annual supplemental payments shall be reduced to $1,000,000. Each qualifying hospital's annual supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), LR 41:133 (January 2015).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Secretary

1501#064

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Leave of Absence Days
Reimbursement Reduction
(LAC 50:II.20021)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20021 in the Medical Assistance Program as authorized by R.S. 36:254 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 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20021. Leave of Absence Days
[Formerly LAC 50:VII.1321]

A. - E. ...

F. Effective for dates of service on or after July 1, 2013, the reimbursement paid for leave of absence days shall be 10 percent of the applicable per diem rate in addition to the provider fee amount.

1. The provider fee amount shall be excluded from the calculations when determining the leave of absence days payment amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 41:133 (January 2015).

Kathy H. Kliebert
Secretary

1501#065

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Pediatric Day Health Care Program
(LAC 48:I.Chapters 52 and 125 and LAC 50:XV.27503)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.5237, §5247, §5257, §12501-12503, adopted §12508, and amended LAC 50:XV.27503 in the Medical Assistance Program as authorized by R.S. 36:254 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 I. General Administration
Subpart 3. Licensing and Certification
Chapter 52. Pediatric Day Health Care Facilities
Subchapter D. Participation Requirements
§5237. Acceptance Criteria

A. - D.1. …

2. The medical director of the PDHC facility may provide the referral to the facility only if he/she is the child's prescribing physician, and only if the medical director has no ownership interest in the PDHC facility.

3. No member of the board of directors of the PDHC facility may provide a referral to the PDHC. No member of the board of directors of the PDHC facility may sign a prescription as the prescribing physician for a child to participate in the PDHC facility services.

4. No physician with ownership interest in the PDHC may provide a referral to the PDHC. No physician with ownership interest in the PDHC may sign a prescription as the prescribing physician for a child to participate in the PDHC facility services.

5. Notwithstanding anything to the contrary, providers are expected to comply with all applicable federal and state rules and regulations including those regarding anti-referral and the Stark Law.

E. - G.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2768 (December 2009), amended LR 41:134 (January 2015).

Subchapter E. Pediatric Day Health Care Services
§5247. Developmental and Educational Services

A. …

B. For any child enrolled in the early intervention program (EarlySteps) or the local school district's program under the Individuals with Disabilities Act, the PDHC facility shall adhere to the following.

1. …

2. The PDHC facility shall not duplicate services already provided through the early intervention program or the local school district. EarlySteps services cannot be provided in the PDHC unless specifically approved in writing by the DHH EarlySteps Program. Medicaid waiver services cannot be provided in the PDHC unless specifically approved in writing by the Medicaid waiver program. The PDHC shall maintain a copy of such written approval in the child's medical record.

B.3. - D.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2770 (December 2009), amended LR 41:134 (January 2015).

§5257. Transportation

A. The PDHC facility shall provide or arrange transportation of children to and from the facility; however, no child, regardless of his/her region of origin, may be in transport for more than one hour on any single trip. The PDHC facility is responsible for the safety of the children during transport. The family may choose to provide their own transportation.

1. - 1.b. Repealed.

B. Whether transportation is provided by the facility on a daily basis or as needed, the general regulations under this Section shall apply.

C. If the PDHC facility provides transportation for children, the PDHC facility shall maintain in force at all times current commercial liability insurance for the operation of PDHC facility vehicles, including medical coverage for children in the event of accident or injury.

1. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment.

2. The PDHC facility shall maintain documentation that consists of the insurance policy or current binder that includes the name of the PDHC facility, the name of the insurance company, policy number, and period of coverage and explanation of coverage.

3. DHH Health Standards shall specifically be identified as the certificate holder on the policy and any certificate of insurance issued as proof of insurance by the insurer or producer (agent). The policy must have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

D. If the PDHC facility arranges transportation for children through a transportation agency, the facility shall maintain a written contract which is signed by a facility representation and a representative of the transportation agency. The contract shall outline the circumstances under which transportation will be provided.

1. The written contract shall be dated and time limited and shall conform to these licensing regulations.

2. The transportation agency shall maintain in force at all times current commercial liability insurance for the operation of transportation vehicles, including medical coverage for children in the event of accident or injury. Documentation of the insurance shall consist of the:

a. insurance policy or current binder that includes the name of the transportation agency;

b. name of the insurance agency;

c. policy number;

d. period of coverage; and

e. explanation of coverage.

3. DHH Health Standards shall specifically be identified as the certificate holder on the policy and any certificate of insurance issued as proof of insurance by the insurer or producer (agent). The policy must have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

4. - 10. Repealed.

E. Transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency shall meet the following requirements.

1. Transportation agreements shall conform to state laws, including laws governing the use of seat belts and child restraints. Vehicles shall be accessible for people with disabilities or so equipped to meet the needs of the children served by the PDHC facility.

2. The driver or attendant shall not leave the child unattended in the vehicle at any time.

2.a. - 6. Repealed.

F. Vehicle and Driver Requirements

1. The requirements of Subsection F of this Section shall apply to all transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency.

2. The vehicle shall be maintained in good repair with evidence of an annual safety inspection.

3. The following actions shall be prohibited in any vehicle while transporting children:

a. the use of tobacco in any form;

b. the use of alcohol;

c. the possession of illegal substances; and

d. the possession of firearms, pellet guns, or BB guns (whether loaded or unloaded).

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. The facility shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport children on behalf of the PDHC facility. At a minimum, a class "D" chauffeur's license is required for all drivers who transport children on behalf of the PDHC facility.

6. Each transportation vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in each facility or contracted vehicle. This shall include oxygen, pulse oximeter, and suction equipment. Additionally, this shall include airway management equipment and supplies required to meet the needs of the children being transported.

8. Each driver or attendant shall be provided with a current master transportation list including:

a. each child's name;

b. pick up and drop off locations; and

c. authorized persons to whom the child may be released.

i. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

9. The driver or attendant shall maintain an attendance record for each trip. The record shall include:

a. the driver's name;

b. the date of the trip;

c. names of all passengers (children and adults) in the vehicle; and

d. the name of the person to whom the child was released and the time of release.

10. There shall be information in each vehicle identifying the name of the administrator and the name, telephone number, and address of the facility for emergency situations.

G. Child Safety Provisions

1. The requirements of Subsection G of this Section shall apply to all transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency.

2. The driver and one appropriately trained staff member shall be required at all times in each vehicle when transporting any child. Staff shall be appropriately trained on the needs of each child, and shall be capable and responsible for administering interventions when appropriate.

3. Each child shall be safely and properly:

a. assisted into the vehicle;

b. restrained in the vehicle;

c. transported in the vehicle; and

d. assisted out of the vehicle.

4. Only one child shall be restrained in a single safety belt or secured in any American Academy of Pediatrics recommended age appropriate safety seat.

5. The driver or appropriate staff person shall check the vehicle at the completion of each trip to ensure that no child is left in the vehicle.

a. The PDHC facility shall maintain documentation that includes the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

6. During field trips, the driver or staff member shall check the vehicle and account for each child upon arrival at, and departure from, each destination to ensure that no child is left in the vehicle or at any destination.

a. The PDHC facility shall maintain documentation that includes the signature of the person conducting the check and the time the vehicle was checked for each loading and unloading of children during the field trip. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

7. Appropriate staff person(s) shall be present when each child is delivered to the facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2771 (December 2009), amended LR 41:134 (January 2015).

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.

* * *

Pediatric Day Health Care (PDHC) Providers—a facility that may operate seven days a week, not to exceed 12 hours a day, to provide care for medically fragile children under the age of 21, including technology dependent children who require close supervision. Care and services to be provided by the pediatric day health care facility shall include, but not be limited to:

a. nursing care, including, but not limited to:

i. tracheotomy and suctioning care;

ii. medication management; and

iii. intravenous (IV) therapy;

b. respiratory care;

c. physical, speech, and occupational therapies;

d. assistance with activities of daily living;

e. transportation services; and

f. education and training.

* * *

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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:135 (January 2015).

§12503. General Information

A. - B. …

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 3. …

4. hospice providers or inpatient hospice facilities;

5. outpatient abortion facilities; and

6. pediatric day health care facilities.

D. - F.4. …

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs-DD, ADHC providers, hospice providers, outpatient abortion facilities, and pediatric day health care centers that meet one of the following conditions:

1. - 3. …

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012;

5. outpatient abortion facilities which were licensed by the department on or before May 20, 2012; or

6. pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:

a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by March 1, 2014;

b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;

c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and

d. becomes licensed as a PDHC by the department no later than December 31, 2014.

H. - H.2. …

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 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 38:1961 (August 2012), LR 41:136 (January 2015).

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

§12508. Pediatric Day Health Care Providers

A. No PDHC provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of a PDHC provider license. Once the FNR Program approval is granted, a PDHC provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. For purposes of facility need review, the service area for a proposed PDHC shall be within a 30 mile radius of the proposed physical address where the provider will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional PDHC provider in the geographic location and service area for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

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

a. the number of other PDHC providers in the same geographic location, region, and service area servicing the same population; and

b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferable and are limited to the location and the name of the original licensee.

1. A PDHC provider undergoing a change of location in the same licensed service area shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. A PDHC provider undergoing a change of location outside of the licensed service area shall submit a new FNR application and appropriate fee and undergo the FNR approval process.

2. A PDHC provider undergoing a change of ownership shall submit a new application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location 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, Bureau of Health Services Financing, LR 41:136 (January 2015).

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 19. Pediatric Day Health Care Program

Chapter 275. General Provisions

§27503. Recipient Criteria

A. In order to qualify for PDHC services, a Medicaid recipient must meet the following criteria. The recipient must:

1. ...

2. require ongoing skilled medical care or skilled nursing care by a knowledgeable and experienced licensed professional registered nurse (RN) or licensed practical nurse (LPN);

3. have a medically complex condition(s) which require frequent, specialized therapeutic interventions and close nursing supervision. Interventions are those medically necessary procedures provided to sustain and maintain health and life. Interventions required and performed by individuals other than the recipient's personal care giver would require the skilled care provided by professionals at PDHC centers. Examples of medically necessary interventions include, but are not limited to:

a. suctioning using sterile technique;

b. provision of care to a ventilator dependent and/or oxygen dependent recipients to maintain patent airway and adequate oxygen saturation, inclusive of physician consultation as needed;

c. monitoring of blood pressure and/or pulse oximetry level in order to maintain stable health condition and provide medical provisions through physician consultation;

d. maintenance and interventions for technology dependent recipients who require life-sustaining equipment; or

e. complex medication regimen involving, and not limited to, frequent change in dose, route, and frequency of multiple medications, to maintain or improve the recipient's health status, prevent serious deterioration of health status and/or prevent medical complications that may jeopardize life, health or development;

4. have a medically fragile condition, defined as a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals are medically complex and potentially dependent upon medical devices, experienced medical supervision, and/or medical interventions to sustain life;

a. medically complex may be considered as chronic, debilitating diseases or conditions, involving one or more physiological or organ systems, requiring skilled medical care, professional observation or medical intervention;

b. examples of medically fragile conditions include, but are not limited to:

i. severe lung disease requiring oxygen;

ii. severe lung disease requiring ventilator or tracheotomy care;

iii. complicated heart disease;

iv. complicated neuromuscular disease; and

v. unstable central nervous system disease;

5. have a signed physician's order, not to exceed 180 days, for pediatric day health care by the recipient's physician specifying the frequency and duration of services; and

6. be stable for outpatient medical services.

B. If the medical director of the PDHC facility is also the child's prescribing physician, the department reserves the right to review the prescription for the recommendation of the child's participation in the PDHC Program.

1. - 1.j. Repealed.

C. Re-evaluation of PDHC services must be performed, at a minimum, every 120 days. This evaluation must include a review of the recipient's current medical plan of care and provider agency documented current assessment and progress toward goals.

D. A face-to-face evaluation shall be held every four months by the child's prescribing physician. Services shall be revised during evaluation periods to reflect accurate and appropriate provision of services for current medical status.

E. Physician's orders for services are required to individually meet the needs of each recipient and shall not be in excess of the recipient's needs. Physician orders prescribing or recommending PDHC services do not, in themselves, indicate services are medically necessary or indicate a necessity for a covered service. Eligibility for participation in the PDHC Program must also include meeting the medically complex provisions of this Section.

F. When determining the necessity for PDHC services, consideration shall be given to all of the services the recipient may be receiving, including waiver services and other community supports and services. This consideration must be reflected and documented in the recipient's treatment plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1557 (July 2010), amended LR 41:137 (January 2015).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert
Secretary

1501#066

RULE

Department of Health and Hospitals
Emergency Response Network

Trauma Protocols, Stroke Protocols and STEMI Protocols
(LAC 48:I.Chapters 191, 193 and 195)

The Louisiana Emergency Response Network Board has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and codifies in LAC

48:I.Chapters 191, 193 and 195, all protocols heretofore adopted and promulgated by the Louisiana Emergency Response Network Board for the transport of trauma and time sensitive ill patients, adopted as authorized by R.S. 9:2798.5.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 15. Louisiana Emergency Response Network Board
Chapter 191. Trauma Protocols
§19101. Entry Criteria and Region 4 LERN LCC Destination Protocol

A. On November 15, 2007, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol" for region 4 of the Louisiana Emergency Response Network (R.S. 40:2842(3)), which region includes the parishes of Acadia, Evangeline, Iberia, Lafayette, St. Martin, St. Landry, and Vermilion, as follows.

1. LERN Entry Criteria

LERN Entry Criteria		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES→	Call LCC
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	Call LCC
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and > 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	Call LCC
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	Call LCC

LERN Entry Criteria		
Mechanism		
☐ Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash Intrusion > 12 in. occupant site: >20 in. any site ☐ Ejection, partial or complete from automobile ☐ Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or >5 MPH impact ☐ Motorcycle crash >20 MPH	YES→	Call LCC
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	Call LCC
Other		
☐ Age ≥55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	Call LCC

2. LERN Region 4 LCC Destination Protocol

LERN Region 4 LCC Destination Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40 percent BSA without IV	YES→	Closest ED
NO ↓		
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	LERN Level II
NO ↓		
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and ≥ 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	LERN Level II or III
NO ↓		
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	LERN Level II or III

LERN Region 4 LCC Destination Protocol		
↓		
Mechanism		
☐ Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash ☐ Intrusion > 12 in. occupant site: >20 in. any site ☐ Ejection, partial or complete from automobile ☐ Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or >5 MPH impact ☐ Motorcycle crash >20 MPH	YES→	LERN Level II or III
NO ↓		
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	LERN
NO ↓		
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	LERN Level II, III or IV

B. On June 26, 2008, the Louisiana Emergency Response Network Board passed a resolution allowing any region of the Louisiana Emergency Response Network which agreed to use the foregoing "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol" to begin operating using the "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol" set forth above.

C. This protocol was published at LR 35:1181-1183 (June 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:138 (January 2015).

§19103. Region 7 LERN Entry and Destination Protocols

A. On November 15, 2007, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated "Region 7 LERN Entry and Destination Protocol" for region 7 of the Louisiana Emergency Response Network [R.S. 40:2842(3)], which region includes the parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster, as follows.

1.a. Traumatic patients who meet the following criteria will be entered to LERN call center and should be transported directly to LSUHSC in Shreveport, Louisiana, if possible:

i. airway compromise (intubated, apneic, or obstructed airway);

ii. penetrating wound of head, neck, chest, abdomen, groin, or buttocks;

iii. blood pressure ≤ 100 or signs of shock;

iv. GCS 12 or less;

v. new onset neurological deficit associated with traumatic event;

vi. extremity wound with absent pulse or amputation proximal to foot or hand.

b. Trauma patients who meet the following criteria, and are located outside the city limits of Shreveport and Bossier City, should be taken to nearest hospital for immediate stabilization followed by continued rapid transport to LSUHSC Shreveport per the LERN hospital protocol:

i. unable to establish and maintain adequate airway/ventilation;

ii. hypotension unresponsive to crystalloids (no more than 2 L);

iii. patients who meet trauma center criteria but have a transport time > 60 minutes;

iv. traumatic arrest.

B. On May 8, 2008, the Louisiana Emergency Response Network Board (R.S. 40:2842(1)) amended and promulgated, as amended, "Region 7 LERN Entry and Destination Protocol" for region 7 of the Louisiana Emergency Response Network (R.S. 40:2842(3)), which region includes the parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster, which protocol was originally adopted and promulgated on November 15, 2007, so that the "Region 7 Louisiana Emergency Response Network Entry and Destination Protocol," as amended, effective May 8, 2008, is as follows.

1.a. Traumatic patients who meet the following criteria will be entered to LERN call center and should be transported directly to LSUHSC in Shreveport, if possible:

i. airway compromise (intubated, apneic, or obstructed airway);

ii. penetrating wound of head, neck, chest, abdomen, groin, or buttocks;

iii. blood pressure ≤ 100 or signs of shock;

iv. GCS 12 or less;

v. new onset neurological deficit associated with traumatic event;

vi. extremity wound with absent pulse or amputation proximal to foot or hand;

vii. burn patients as identified following ABA guidelines;

viii. *healthcare provider discretion*—patients evaluated by hospitals may be entered into LERN if the evaluating hospitals medical personnel determines the patient has a medical condition requiring immediate surgical evaluation and/or intervention and the transferring hospital does not have these services immediately available at that facility (*Healthcare provider discretion* does not include orthopedic injuries.).

b. Patients that have been entered into LERN but will require greater than 60 minute transport time from the field should stop at local area hospitals for stabilization. These patients should still be entered into LERN from the field but will require transport to local area hospitals for stabilization. LERN will facilitate the movement of these patients from the local hospital once stabilizing measures are completed.

i. The following are conditions requiring immediate stabilization by local area hospitals:

(a). unable to establish and maintain adequate airway/ventilation;

(b). hypotension unresponsive to crystalloids (no more than 2 L);

(c). patients who meet trauma center criteria but have a transport time > 60 minutes;

(d). traumatic arrest.

C. The following will be routed directly to the LSUHSC Burn Unit from local area hospitals or from the field:

1. partial-thickness and full thickness burns greater than 10 percent of the total body surface area (TBSA) in patients younger than 10 years of age or older than 50 years of age;

2. partial-thickness and full thickness burns greater than 20 percent of the total body surface area (TBSA) in other age groups;

3. partial-thickness and full thickness burns involving the face, eyes, ears, hands, feet, genitalia, perineum, or skin overlying major joints;

4. full-thickness burns greater than 5 percent TBSA in any age group;

5. electrical burns, including lightning injury;

6. chemical burns;

7. patients with inhalation injury;

8. burn injury in patients with pre-existing illnesses that could complicate management, prolong recovery, or adversely affect mortality risk;

9. any burn patient in whom concomitant trauma poses an increased risk of morbidity or mortality may be treated initially in a trauma center until stable before transfer to a burn center;

10. children with burns seen in hospitals without qualified personnel or equipment for their care;

11. burn injury in patients who will require special social and emotional or long-term rehabilitative support, including cases involving suspected child abuse or neglect.

D. These protocols were published at LR 35:1183-1184 (June 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:139 (January 2015).

§19105. Standard LERN Entry Criteria; Standard Destination Protocol

A. On June 18, 2009, the Louisiana Emergency Response Network Board (R.S. 40:2842(1)) adopted and promulgated "Standard LERN Entry Criteria" and "Standard Destination Protocol" for use in all regions, except region 7, of the Louisiana Emergency Response Network (R.S. 40:2842(3)), replacing the "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol," adopted and promulgated November 15, 2007, as follows.

1. Standard LERN Entry Criteria—Pre-Hospital and Hospital Triage Protocol

Standard LERN Entry Criteria Pre-Hospital and Hospital Triage Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40 percent BSA without IV	YES→	Call LCC
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	Call LCC
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and > 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	Call LCC
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	Call LCC
Mechanism		
☐ Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash Intrusion > 12 in, occupant site: >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact ☐ Motorcycle crash >20 MPH	YES→	Call LCC
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	Call LCC
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	Call LCC

2. Standard Destination Protocol

Standard Destination Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40 percent BSA without IV	YES→	Closest ED
NO ↓		
Neurologic Trauma		
☐ GCS <14 ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	LERN Level I or II
NO ↓		
Physiologic		

Standard Destination Protocol		
☐ SBP <90 (adults and >9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and >9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	LERN Level I, II or III
NO ↓		
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	LERN Level I, II or III
NO ↓		
Mechanism		
☐ Falls >20 ft. (adults) >10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash • Intrusion >12 in. occupant site: • >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact ☐ Motorcycle crash >20 MPH	YES→	LERN Level II or III
NO ↓		
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	LERN Level II or III
NO ↓		
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	LERN Level II, III or IV

B. These protocols were published at LR 35:1409 (July 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:140 (January 2015).

§19107. Interregional Transfer Protocol

A. On June 18, 2009, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated "Interregional Transfer Protocol" for the Louisiana Emergency Response Network [R.S. 40:2842(3)], as follows.

1. The LERN interregional transfer protocol only applies to those regions and (hospitals/EMS) that are participating in the LERN network.

2. The interregional transfer protocol will be tested over a 90 day period. At the end of the 90 days all interregional transfers will be reviewed for compliance with protocols, quality, patient safety and standards of care. This information will be shared with commissions of the regions participating as well as the LERN board and the "design the system group". Decisions regarding the interregional transfer protocol will be made at the end of the 90 days trial period.

3. Interregional Transfer Protocol

a. All patients whose condition exceeds the regionally available resources provided by local area hospitals may be transferred from one region to another following LERN interregional transfer protocol. Destination to the definitive care hospital in the receiving region will follow the LERN standard protocol (all laws regarding EMTALA apply).

b. Only regions operating with the LERN standard protocol will be involved in the LERN interregional transfer protocol.

c. Patients being transferred via the LERN interregional transfer protocol must:

i. be assessed at a local area hospital for treatment and stabilized by a physician and meet the entry criteria as determined by LERN standard protocol;

ii. treating physician will call LERN to request a transfer to another hospital;

iii. LCC (LERN call center) will determine the closest and most appropriate facility available following LERN standard protocol;

iv. if there are no available resources in the region then the LCC will locate an appropriate facility outside the region, and an interregional transfer will be considered. (All LERN interregional transfers will be reviewed by LERN medical directors and data will be collected for QI/PI.)

d. Exceptions

i. EMS requesting LERN for patients located on or close to borders between two regions will and can be directed to either region based on the patient needs and available resources.

ii. Air-med at the scene that is able to mitigate the time of transfer of long distances will and can be directed to hospitals outside the region they originate from based on patients needs and available resources.

iii. LERN medical directors will be involved in the decision making (real time) in all patients that fall into the exception category.

B. On August 20, 2009, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated the amended "Interregional Transfer Protocol" for the Louisiana Emergency Response Network [R.S. 40:2842(3)], as follows.

1. The LERN interregional transfer protocol only applies to those regions, hospitals and pre-hospital providers that are participating in the LERN network.

2. The interregional transfer protocol will be tested over a 90 day period, at the end of which all interregional transfers will be reviewed for compliance with protocols, quality, patient safety and standards of care. This information will be shared with regional commissions, LERN Board, and LERN design the system work group. Decisions regarding the Interregional Transfer Protocol will be made at the end of the 90-day trial period.

3. Interregional Transfer Protocol

a. All patients whose conditions exceed the regionally available resources provided by local area hospitals may be transferred from one region to another following LERN interregional transfer protocol. Destination to the definitive care hospital in the receiving region will follow the LERN standard protocol. All laws regarding EMTALA apply.

b. Only regions operating with the LERN standard protocol will be involved in the LERN interregional transfer protocol.

c. Patients transferred via the LERN interregional transfer protocol must:

i. be assessed at a local area hospital for treatment, be stabilized by a physician, and meet the entry criteria as determined by LERN standard protocol; and

ii. have a treating physician call LERN to request a transfer to another hospital.

d. The LERN call center (LCC) will determine the closest and most appropriate facility available following LERN standard protocol.

e. If there are no available resources in the region, the LCC will locate an appropriate facility outside the region, and a interregional transfer will be considered.

f. All LERN interregional transfers will be reviewed by LERN medical directors and data will be collected for QI/PI.

g. Exceptions

i. Pre-hospital providers requesting LERN for patients located on or close to borders between regions will and can be directed to either region based on the patient needs and available resources.

ii. Air-med at the scene able to mitigate the time of transfer of long distances will and can be directed to hospitals outside the region they originate from, based on patient needs and available resources.

iii. LERN medical directors will be involved in the decision making for all patients in the exception category.

C. These protocols were published at LR 35:2109-2110 (September 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:141 (January 2015).

§19109. Standard LERN Entry and Destination Criteria

A. On October 21, 2010, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] revised, adopted and promulgated "Standard LERN Entry Criteria" and "Standard Destination Protocol" for use in all regions, except region 7, of the Louisiana Emergency Response Network [R.S. 40:2842(3)], replacing the "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol," adopted and promulgated June 18, 2009, as follows.

1. Standard LERN Entry Criteria—Pre-Hospital and Hospital Triage Protocol

Standard LERN Entry Criteria Pre-Hospital and Hospital Triage Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway	YES→	Call LCC
☐ Burn patient >40 percent BSA without IV		
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	Call LCC
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and ≥ 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	Call LCC
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	Call LCC
Mechanism		
☐ Falls >20 ft. (adults) >10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash Intrusion >12 in. occupant site: >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact ☐ Motorcycle crash >20 MPH	YES→	Call LCC
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	Call LCC
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	Call LCC

2. Standard Destination Protocol

Standard Destination Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40 percent BSA without IV	YES→	Closest ED
NO ↓		
Neurologic Trauma		

Standard Destination Protocol		
☐ GCS <14 ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	LERN Level I or II
NO ↓		
Physiologic		
☐ SBP <90 (adults and >9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and ≥9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	LERN Level I, II or III
NO ↓		
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	LERN Level I, II or III
NO ↓		
Mechanism		
☐ Falls >20 ft. (adults) >10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash • Intrusion >12 in. occupant site: • >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact ☐ Motorcycle crash >20 MPH	YES→	LERN Level II or III
NO ↓		
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	LERN Level II or III
NO ↓		
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	LERN Level II, III or IV

B. These protocols were published at LR 36:2743-2745 (November 20, 2010).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:142 (January 2015).

§19111. Interregional Transfer Protocol

A. On January 20, 2011, the Louisiana Emergency Response Network Board (R.S. 40:2842(1) and (3)) adopted and promulgated "LERN Hospital Interregional Transfer Guidelines" and "LERN Hospital Interregional Transfer Protocol", replacing "Interregional Transfer Protocol" adopted June 18, 2009, as follows.

1. LERN Hospital Interregional Transfer Guidelines

a. All patients whose conditions exceed the regionally available resources provided by local area hospitals may be transferred from one region to another following LERN interregional transfer protocol.

b. The LERN hospital interregional transfer protocol only applies to hospitals that are participating in the LERN network.

c. Regions or individual parishes that have MOU's (which include medical control and destination guidelines), between an ACS verified level 1 trauma center and a local parish medical society(ies) will be incorporated into the LCC standard operating procedure for the effected region(s).

2. LERN Hospital Interregional Transfer Protocol

a. Patients transferred via the LERN hospital interregional transfer protocol must:

i. meet LERN standard entry criteria that requires resources and/or capabilities not available in that region;

ii. be assessed and stabilized to the best of their ability at a local area hospital prior to transport to the closest appropriate hospital;

iii. the treating physician/nurse must contact LERN to request a transfer. The LERN communications center (LCC) will determine the closest and most appropriate facility available following the LERN standard destination protocol.

B. These guidelines and protocols were published at LR 37:751 (February 20, 2011).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:143 (January 2015).

§19113. LERN Entry Criteria: Trauma; LERN Destination Protocol: Trauma

A. On January 20, 2011, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN ENTRY CRITERIA: Trauma; Pre-Hospital and Hospital Triage Protocol" and "LERN DESTINATION PROTOCOL: Trauma" replacing the "Standard LERN Entry Trauma Criteria" and "Standard LERN Entry Trauma Criteria Destination Protocol" adopted and promulgated January 20, 2011, as follows.

1. LERN Entry Criteria: Trauma

a. Pre-Hospital and Hospital Triage Protocol

Call LERN Communications Center for:
• Unmanageable Airway • Tension Pneumothorax • Traumatic cardiac arrest • Burn Patient without patent airway • Burn patient >40 percent BSA without IV
Physiologic
• GCS <14 • SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8 y/o) <70 (age 1 to 12 months)

<60 (term neonate) • RR <10 or >29 (adults & ≥ 9 y/o) <15 or >30 (age 1 to 8 y/o) <25 or >50 (<12 m/o)
Anatomic
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, and extremities proximal to elbow and knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist and ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture)
Mechanism
• Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact • Motorcycle crash >20 MPH • High-risk auto crash • Intrusion >12 in, occupant site >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment
Other
• Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥ 55 y/o or <8 y/o • Anticoagulation and bleeding disorders • End stage renal disease • Transplant patients
Multi/Mass Casualty Incident (MCI)

2. LERN Destination Protocol: Trauma

LERN Destination Protocol: Trauma		
• Unmanageable Airway • Tension Pneumothorax • Traumatic cardiac arrest • Burn patient without patent airway • Burn patient >40 percent BSA without IV	YES→	Closest ED
Physiologic		
• GCS < 14 • SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) • RR <10 or >29 (adults and > 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (< 12 m/o)	YES→	LERN Level I, II, or III
Anatomic		
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to neck, torso and extremities proximal to elbow and knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist and ankle • Pelvic Fracture	YES→	LERN Level I, II, or III

LERN Destination Protocol: Trauma		
• Hip fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture		
Mechanism		
Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height High-risk auto crash Intrusion > 12 in. occupant site: >18 in. any site Ejection, partial or complete from automobile Death in same passenger compartment Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact Motorcycle crash >20 MPH	YES→	LERN Level II, or III
Other		
• Pregnancy > 20 weeks • Burns (follow ABA guidelines) • Age >55 y/o or <8 y/o • Anticoagulation and bleeding disorders • End stage renal disease • Transplant patients	YES→	LERN Level II, III, or IV
MULTI/MASS CASUALTY INCIDENT (MCI)	YES→	LERN Level I, II, III, or IV

B. These protocols were published at LR 37:1466-1468 (April 20, 2011).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:143 (January 2015).

§19115. LERN Destination Protocol: TRAUMA

A. On April 26, 2012, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: Trauma" replacing the "LERN Destination Protocol: Trauma" adopted and promulgated April 21, 2011, as follows.

• Unmanageable Airway • Tension Pneumothorax • Traumatic cardiac arrest • Burn Patient without patent airway • Burn patient >40 percent BSA without IV	→	Closest ED
Physiologic		
• GCS <14 • SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8 y/o) <70 (age 1 to 12 months) <60 (term neonate) • RR <10 or >29 (adults and ≥ 9 y/o) <15 or >30 (age 1 to 8 y/o) <25 or >50 (<12 m/o)	→	Level I, II, or III*
Anatomic		
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, & extremities proximal to elbow & knee • Flail Chest	→	Level I, II, or III*

• 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist & ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture)		
Mechanism		
• Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • High-risk auto crash • Intrusion > 12 in. occupant site > 18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact • Motorcycle crash >20 MPH	→	Level I, II, or III*
Other		
• Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥ 55 y/o or <8 y/o • Anticoagulation and bleeding disorders -patients w/ head injuries are at high risk for rapid deterioration	→	Level II, or III*
MULTI/MASS CASUALTY INCIDENT (MCI)	→	Level I, II, or III*

*Refers to ACS Verified Level Trauma Center—Where trauma center not available, patient will be routed to facility with appropriate resource which may not need be the highest level facility.

B. This protocol was published at LR 38:1462-1463 (June 20, 2012).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:144 (January 2015).

§19117. LERN Destination Protocol: Trauma

A. On November 21, 2013, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: TRAUMA" replacing the "LERN Destination Protocol: Trauma" adopted and promulgated April 26, 2012, and repealing "LERN ENTRY CRITERIA, Trauma Pre-Hospital and Hospital Triage Protocol" adopted and promulgated April 21, 2011, as follows.

1. Call LERN Communication Center at (866) 320-8293 for patients meeting the following criteria.

• Unmanageable airway • Tension pneumothorax • Traumatic cardiac arrest • Burn patient without patent airway • Burn patient > 40 percent BSA without IV	→	Closest ED/Trauma Center
NO ↓		
Physiologic		
• GCS < 14 • SBP < 90 (adults and > 9 y/o) < 70 + 2 [age (yrs)] (age 1 to 8 y/o) < 70 (age 1 to 12 months) < 60 (term neonate) • RR < 10 or > 29 (adults & ≥ 9 y/o) < 15 or > 30 (age 1 to 8 y/o) < 25 or > 50 (< 12 m/o)	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
NO ↓		
Anatomic		
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, and extremities proximal to elbow and knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist and ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture)	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
NO ↓		
Mechanism		
• Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • High-risk auto crash • Intrusion >12 in. occupant site >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact • Motorcycle crash >20 MPH	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
NO ↓		
Other		
• Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥ 55 y/o or <8 y/o • Anticoagulation and bleeding disorders - patients w/ head injuries are at high risk for rapid deterioration	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
MULTI/MASS CASUALTY INCIDENT (MCI)	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center

B. This protocol was published at LR 40:190-191 (January 20, 2014).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Emergency Response Network, LR 41:145 (January 2015).

Chapter 193. Stroke Protocols

§19301. LERN Destination Protocol: Stroke

A. On November 21, 2013, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: STROKE," as follows.

1. The following protocol applies to patients with suspected stroke.

Compromise Of: Airway Breathing Circulation	→	Closest ED
NO ↓		
• All other patients with suspected stroke Patients with seizure with focal deficit, extended window (4-8 hrs from onset), and patients with unknown onset may benefit from evaluation at Level I or II hospital with on-site stroke expertise.	→	Transport to LERN Stroke Level I, II, or III
NO ↓		
Terminally Ill or Palliative Care Patient	→	Transport to LERN Stroke Level I, II, III, or IV
Guiding principles: Time is the critical variable in acute stroke care. • Protocols that include pre-hospital notification while en route by EMS should be used for patients with suspected acute stroke to facilitate primary destination efficiency. • Treatment with intravenous tPA is the only FDA approved acute therapy for stroke. • EMS should identify the geographically closest facility capable of providing tPA treatment. • Transfer patient to the nearest hospital equipped to provide tPA treatment. • Secondary transfer to facilities equipped to provide tertiary care and interventional treatments should not prevent administration of tPA to appropriate patients.		

B. This protocol was published at LR 40:189-190 (January 20, 2014).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:146 (January 2015).

Chapter 195. STEMI Protocols

§19501. STEMI Triage Protocol for Pre-Hospital Providers

A. On November 21, 2013, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "STEMI Triage Protocol for Pre-Hospital Providers," as follows.

Acute coronary symptoms ≥ 15 minutes and < 12 hours AND 12 lead ECG criteria of 1 mm ST elevation in 2 or more contiguous leads OR LBBB NOT KNOWN to be present in the past EMS ECG interpreted or transmitted to hospital for MD consult for bypass and activation		
↓		
STEMI-Receiving Center with medical contact-to-device (PCI) ≤ 90 minutes (by ground or air)?	YES→	Transport to nearest STEMI-Receiving Center with pre-hospital notification/activation Goal medical contact to device (PCI) time of 90 minutes or less
NO ↓		
Transport to closest STEMI-Referral Hospital with Pre-hospital notification/activation Goal medical contact to fibrinolytic needle time of 30 minutes or less	→	Transport to nearest STEMI-Receiving Center for subsequent PCI

*O'Gara PT, Kushner FG, Ascheim DD, et all. 2013 ACCF/AHA Guideline for the Management of ST-Elevation Myocardial Infraction: A Report of the American College of Cardiology Foundation/American Heart Association Task Force on Practice Guidelines. Journal of the American College of Cardiology. 2013;61(4):e78.

B. This protocol was published at LR 50:192 (January 20, 2014).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network, LR 41:146 (January 2015).

Paige B. Hargrove
Executive Director

1501#034

RULE

Department of Health and Hospitals
Office for Citizens with Developmental Disabilities

Infant Intervention Services (LAC 48:IX.334)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities (OCDD) has adopted LAC Title 48:IX.334 as directed by House Bill 1 of the 2013 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This proposed Rule is

promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

Act 417 of the 2013 Regular Session of the Louisiana Legislature provides for authority for the department to establish a statewide system of payments; to make provisions relative to payment for services; to allow for uses of funds for provision of certain services; and provides for authority to establish a schedule of fees for services provided to certain recipients in EarlySteps, Louisiana's Early Intervention Program for Infants and Toddlers with Disabilities and their Families.

Due to a budgetary shortfall in state fiscal year 2014, the Department of Health and Hospitals promulgated an Emergency Rule which amended the provisions governing the payment for some EarlySteps services (*Louisiana Register*, Volume 39, Number 9). This proposed Rule is being promulgated to continue the provisions of the October 1, 2013 Emergency Rule. It is estimated that implementation of this Emergency Rule will increase revenue by approximately $1,200,000 for state fiscal year 2013-2014. This action is being taken to avoid a budget deficit in the Office for Citizens with Developmental Disabilities.

Effective October 1, 2014, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities establishes a system of payments for some services provided through the EarlySteps Program.

Title 48

PUBLIC HEALTH—GENERAL

Part IX. Developmental Disabilities Services

Chapter 3. Infant Intervention Services

§334. System of Payments

A. The department shall have the authority to establish a statewide system of payments in accordance with 34 CFR part 303.

B. In implementing the system of payments:

1. the department establishes a schedule of monthly cost participation for early intervention services per qualifying family. Cost participation shall be based on a sliding scale;

2. application of the family's cost share using the sliding scale will include the family's adjusted gross income, family size, financial hardship, extraordinary expenses associated with the eligible child, and Medicaid eligibility;

a. extraordinary expenses may include but are not limited to unreimbursed medical expenses, equipment, home modifications, or other costs associated with the child with a disability;

b. extraordinary expenses must have been incurred during the calendar year that the family's cost share for individualized family services plan (IFSP) services is applied;

c. the family will be required to produce invoices, receipts, or other documents which establish the costs and payment for these expenses;

d. the family may request a reassessment of their costs based on extraordinary expenses at any time if there are significant changes affecting the determination of the cost participation amount. The request will be in writing and submitted to the service coordinator;

e. the request for reassessment will be considered by the designated EarlySteps office for a determination of the family's request. The family and the service coordinator will receive the department's written response;

3. the sliding scale shall utilize the most recent federal poverty guidelines issued in the *Federal Register* by the United States Department of Health and Human Services as the basis for determining the income threshold based on family size for eligibility for cost participation;

4. the department shall not assess any fee or other charge through the cost participation schedule upon a family which has an annual income of less than 300 percent of the federal poverty level;

5. the department shall not assess fees or other charges through the cost participation schedule which totals more than 3 percent of the monthly income level for a family of four, according to the federal poverty guideline schedule which will be updated annually;

6. once the family's income has been verified with the required documentation and the IFSP services have been determined by the IFSP team, the following will occur:

a. the system point of entry office will issue the cost participation statement to notify the family of their assessed costs which will be reviewed with the family and a copy provided;

b. following the submission of service claims by the child's provider, the Central Finance Office (CFO) will mail a monthly explanation of payment statement (EOP) to the family for payment. The EOP will include a notice of the family's right for reconsideration of their financial status and their right to apply for exemption from cost participation due to financial hardship;

c. families will remit reimbursement to the CFO at the address provided in the EOP;

7. when a family is not complying with the cost participation requirements and procedures for suspending services, the following will occur related to the status of the child's services;

a. a notice will be issued to the family, to the service coordinator and to the designated EarlySteps office;

b. the CFO will notify the department when the family is in arrears for a duration of three months at which time the service coordinator will discuss the family's options with the family and assist the department with its determination of the status of the child's IFSP services;

c. if the family provides its consent, a copy of the notice that the family is in arrears with payment for three months will be sent to the representative and senator in whose district the family resides;

d. the department will make a written determination regarding the status of the child's IFSP services following review of information provided by the service coordinator and the family. Families will be offered the option to continue to receive services available at no cost if they choose according to the no-cost provisions which follow;

e. the department shall not limit early intervention services for a child in any month if the cost for the services in that month exceeds the maximum contribution from the child's family.

C. Parents who have public insurance (Medicaid) and elect not to assign such right of recovery or indemnification to the department or choose not to release financial information will be assessed the cost for each early

intervention service listed on the IFSP according to the most current service rate schedule and the cost participation schedule.

D. No-Cost Provision: the following services that a child is otherwise entitled to receive will have no costs assessed to the parents:

1. child find activities;

2. evaluation and assessment for eligibility and IFSP planning;

3. service coordination, administrative and coordinative activities related to the development review, and evaluation of the IFSP; and

4. implementation of procedural safeguards and other components of the statewide system related to §464 of Act 417.

E. The department will provide written, prior notification to families for use of Medicaid according to the requirements of 34 CFR 303.414. This notice includes a statement that there are no costs charged by the department for use of the eligible child's Medicaid. The notification also includes a statement of the process for resolutions of disputes regarding decisions related to use of Medicaid, failure to pay for services and/or the state's determination of a family's ability to pay.

F. Dispute Resolution Process

1. The procedures used by the department to resolve such disputes will not delay or deny the parents' rights or the child's ability to access timely services.

2. The dispute resolution process can be initiated by the parent according to OCDD's policy for handling system complaints when the parent wishes to contest the imposition of a fee or the department's determination of the parents' ability to pay.

G. Parental Consent. The department will obtain parental consent prior to the use of the child's Medicaid according to the following.

1. EarlySteps will obtain written consent for the use of the child's Medicaid using its established consent for services form.

2. Parental consent will be obtained prior to the initial provision of an early intervention service in the IFSP.

3. Parental consent will be obtained when an increase in frequency, length, duration, or intensity of a service is determined in the child's IFSP.

4. If the parent does not provide consent for the use of the child's Medicaid, the department will make available only those early intervention services on the IFSP for which the parent has provided consent.

5. Parents may withdraw consent for use of their child's Medicaid at any time.

H. Determination of Family Cost. Families are liable for the costs of services that their child receives while enrolled in EarlySteps as follows:

1. The aggregate contributions made by the parent shall not exceed the aggregate cost of the early intervention services received by the child and family (factoring in any amount received from other sources for payment for that service).

2. At least annually, or at any time the department determines that a reassessment of the parent's financial circumstances is warranted, the department shall conduct such reassessment of financial status.

3. The parent has the right to request a reassessment at any time if there are significant changes affecting the determination of the cost participation amount.

4. Families who have the ability to pay and choose not to pay may be determined as ineligible to continue to receive services until payment is made.

5. The inability of the family of the eligible infant or toddler will not result in a delay or denial of services if the family does not meet the cost participation income requirements or for services for which there are no costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 41:147 (January 2015).

Kathy H. Kliebert
Secretary

1501#003

RULE

Department of Health and Hospitals
Office of Public Health

Reclassification of Failure to Obtain a Food Safety Certification as a Class A Violation (LAC 51:I.113)

Under the authority of R.S. 40:4, R.S. 40:5 et seq., R.S. 40:6, and in accordance with R.S. 49:950 et seq. of the Louisiana Administrative Procedures Act, the state health officer, acting through Department of Health and Hospitals Office of Public Health, has amended Title 51, Part I, §113 (Suspension/Revocation/Civil Fines or Penalties [formerly paragraph 1:007-21]) of the *Public Health—Sanitary Code*. This Rule reclassifies failure to have a food safety certificate from a class B violation to a class A.

The Department of Health and Hospitals (DHH), Office of Public Health (OPH) amends Title 51, Part I, Section 113 (Suspension/Revocation/Civil Fines or Penalties [formerly paragraph 1:007-21]) of the *Public Health—Sanitary Code*. This Rule reclassifies failure to have a food safety certificate from a class B violation to a class A violation. In section 113(i) class A, the first amendment adds the following language, "failure to obtain a food safety certification in accordance with §305 of Part XXIII", as a new violation that creates a condition or occurrence, which may result in death or serious harm to the public. In §113.A.3.a.ii, Class B, the second amendment deletes the following language, "a food safety certificate", relating to permitting, submitting of plans, or training requirements.

Title 51
PUBLIC HEALTH—SANITARY CODE
Part I. General Provisions

§113. Suspension/Revocation/Civil Fines or Penalties [Formerly Paragraph 1:007-21]

A. Pursuant to the provisions of R.S. 40:4, R.S. 40:5 and R.S. 40:6, the state health officer acting through the Office of Public Health, for violation(s) of a compliance order may:

1. suspend or revoke an existing license or permit;

2. seek injunctive relief as provided for in R.S. 40:4 and in 40:6; and/or

3. impose a civil fine:

a. these civil fines shall not exceed $10,000 per violator per calendar year applicable to each specific establishment, facility, or property that the violator owns, manages, operates or leases. The schedule of civil fines by class of violations shall be as follows:

i. class A. Violations that create a condition or occurrence, which may result in death or serious harm to the public. These violations include, but are not limited to: cooking, holding or storing potentially hazardous food at improper temperatures; failure to follow schedule process in low acid canned foods or acidified food production; poor personal hygienic practices; failure to sanitize or sterilize equipment, utensils or returnable, multi-use containers; no water; unapproved water source; cross contamination of water; inadequate disinfection of water before bottling; sewage back up; sewage discharge on to the ground; sewage contamination of drinking water; failure to comply with human drug current good manufacturing practices (CGMP); inadequate labeling of foods or drugs regarding life threatening ingredients or information; failure to provide consumer advisories; non-compliant UV lamps or termination control switch on tanning equipment; the inadequate handling and disposal of potentially infectious biomedical wastes; failure to obtain food safety certification in accordance with §305 of Part XXIII; etc. Class A civil fines shall be $100 per day per violation;

ii. class B. Violations related to permitting, submitting of plans, or training requirements. These violations include, but are not limited to: failure to submit plans or to obtain or hold: a permit to operate; a commercial body art certification; tanning equipment operator training; day care training; a license to install, maintain, or pump out sewage systems; etc. Class B civil fines shall be $75 per day per violation;

iii. class C. Violations that create a condition or occurrence, which creates a potential for harm by indirectly threatening the health and/or safety of the public or creates a nuisance to the public. These violations include, but are not limited to, failure to: properly label food; properly protect food; properly store clean equipment; provide self-closing restroom doors; provide adequate lighting; provide hair restraints; provide soap and towels at hand-washing lavatories; clean floors, walls, ceilings and non-food contact surfaces; properly dispose of garbage; maintain onsite sewage systems; provide electrical power to onsite sewage systems; etc. Class C civil fines shall be $50 per day per violation;

iv. class D. Violations related to administrative, ministerial, and other reporting requirements that do not directly threaten the health or safety of the public. These violations include, but are not limited to, failure to: retain oyster tags; provide hazard analysis critical control plans (HACCP); maintain HACCP records; provide consumer information; provide written recall procedures; maintain lot tracking records; turn in onsite sewage system maintenance records or certification of installation; register product labels; etc. Class D civil fines shall be $25 per day per violation;

b. the duration of noncompliance with a provision of the compliance order shall be determined as follows:

i. an investigation shall be conducted by staff for the purpose of determining compliance/noncompliance within five working days after the deadline date(s) specified in the compliance order. If non-compliance still exists, staff will provide a copy of the post-order investigation report to the person in charge and daily penalty assessments shall begin to accrue immediately from the date that non-compliance was determined in the post-order investigation report;

ii. the daily penalties shall accrue until such time as the agency has been notified in writing by the person in charge that compliance has been achieved and such compliance verified by agency staff, or upon reaching the maximum penalty cap of $10,000 per violator per calendar year. Upon written notification by the person in charge of compliance, an investigation to verify compliance shall be made within five working days of receipt of such notification;

iii. upon verification by investigation that compliance has been achieved, the penalties will cease to accrue on the date of receipt of notification by the person in charge;

c. the secretary of the Department of Health and Hospitals, upon the recommendation of the state health officer, may exercise his discretion and mitigate these civil fines or in lieu of a civil fine, require the violator or an employee designee to attend training seminars in the area of the violator's operations in cases where he is satisfied the violator has abated the violation and demonstrated a sincere intent to prevent future violations;

d. at the discretion of the state health officer, notice(s) imposing penalty assessments may be issued subsequent to either initial or continued noncompliance with any provision of the compliance order. Notice(s) imposing penalty assessments shall be served by United States Postal Service, via certified mail-return receipt requested, registered mail-return receipt requested, or express mail-return receipt requested, or hand delivered. Within the notice imposing penalty assessment, the state health officer will inform the person in charge of the ability to apply for mitigation of penalties imposed and of the opportunity to petition for administrative appeal within 20 days after said notice is served, according to the provisions of R.S. 49:992 of the Administrative Procedure Act;

e. once a penalty assessment is imposed, it shall become due and payable 20 calendar days after receipt of notice imposing the penalty unless a written application for mitigation is received by the state health officer within 20 calendar days after said notice is served or a petition for administrative appeal relative to contesting the imposition of the penalty assessment is filed with the Division of Administrative Law, P.O. Box 44033, Baton Rouge, LA 70804-4033 within 20 calendar days after said notice is served;

f. the department may institute all necessary civil action to collect fines imposed;

g. this Section shall not be construed to limit in any way the state health officer's authority to issue emergency orders pursuant to the authority granted in R.S. 40:4 and §115 of this Part;

h. the provisions of Paragraph 3 and Subparagraph a shall not apply to floating camps, including but not limited to houseboats which are classified as vessels by the United States Coast Guard in accordance with R.S. 40:6 as amended by Act 516 of the 2001 Regular Legislative Session;

4. may (in cases involving pollution of streams, rivers, lakes, bayous, or ditches which are located in public rights of way outside Lake Pontchartrain, Toledo Bend Reservoir or the Sabine River, their drainage basins or associated waterways):

a. suspend or revoke the existing license or permit; and/or

b. issue a civil compliance order and impose a fine of $100 per day up to a maximum of $10,000 in cases where establishments operate without a license or permit or continue to operate after revocation or suspension of their license or permit;

5. may (in cases involving pollution of Lake Pontchartrain, Toledo Bend Reservoir, the Sabine River, their drainage basins, or associated waterways and pursuant to the provisions of R.S. 40:1152 and 40:1153):

a. issue a civil compliance order and/or suspend or revoke the existing license or permit; and/or

b. impose a fine of $100 per day up to a maximum of $10,000 in cases where establishments operate without a license or permit, or continue to operate after revocation or suspension of their license or permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1694 (October 2001), repromulgated LR 28:1210 (June 2002), amended LR 28:2529 (December 2002), LR 41:148 (January 2015).

Kathy H. Kliebert
Secretary

1501#071

RULE

Department of Natural Resources
Office of Coastal Management

Fisherman's Gear Compensation Fund (LAC 43:I.1509)

Under the authority of R.S. 49:214.21-49:214.42 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management has amended LAC 43:I.1509 relative to the administration of the Fisherman's Gear Compensation Fund.

The Rule change better defines the required claim documentation and is a change to one of several claim denial criteria. The change of the denial criteria is in regards to proof of ownership documents of damaged equipment/gear and method of payment (i.e., cash paid receipts) and it removes the current practice of denying claims for equipment that was paid by cash since cash receipts from bona fide business will now be accepted as an eligibility component. This action is not required by federal regulation.

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 1. General
Chapter 15. Administration of the Fisherman's Gear Compensation Fund
§1509. Claims—General Form and Content

A. - A.5.a. …

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include: paid receipts which are completely filled out including the date, full name, address and telephone of the seller along with the claimant's name and/or address together with proof of payment such as copies of money orders or bank cashier's checks for the gear; affidavits; or other evidence. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule except for receipts from bona fide businesses in possession of a commercial or business permit/license, which was in effect at the time of the sale or repair, or a notarized affidavit from a business owner or chief executive officer of the business supporting the validity of the sale or repair. Claimants that made or repaired the damaged gear shall submit a notarized statement that he or she made his or her own gear along with paid receipts for the materials. If all damaged gear was original to the vessel when it was purchased or acquired, a copy of the bill of sale of the boat or subsequent notarized statement to the effect that all gear was original to the boat including date vessel was acquired, full name of seller, and sale price must be included;

A.5.c. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:957 (September 1995), amended by the Office of Coastal Management, LR 40:1944 (October 2014), LR 41:150 (January 2015).

Keith Lovell
Assistant Secretary

1501#014

RULE

Department of Public Safety and Corrections
Office of Motor Vehicles

Driving Schools (LAC 55:III.151)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles has amended Section 151 under Chapter 1, Subchapter A, to require employees of driving schools in direct care or responsibility for minor students to submit and pass a background check. Current regulation only provides for instructors and owners supervising students to submit to and pass a background check. This regulation ensures compliance with the Child Protection Act.

Title 55
PUBLIC SAFETY
Part III. Motor Vehicles
Chapter 1. Driver's License
Subchapter A. General Requirements
§151. Regulations for All Driver Education Providers

A. - E.4. …

5. Any employee of a driving school with direct care or responsibility for minor students or who has access to the student's personal information, shall submit to and successfully pass a background check prior to any contact with minor students. The direct care or responsibility over minor students shall consist of any contact with a minor student, including, but not limited to, picking up students for instruction, monitoring students, or driving students home. This rule applies to all driving school employees, including instructors, owners and administrative staff. Employees of driving schools who are not required to submit to a background check or have not passed a background check shall not be allowed access to minor students or their information. Driving school owners shall be required to submit a list of all employees with direct care or responsibility for minor students to DPS annually, and any time a new employee is hired, by email at ladrivingschools@dps.la.gov. Personal information includes, but is not limited to, any identifying information such as name, address, telephone number, Social Security number, parents' names, name and address of high school attended by student, and emergency contacts.

E.6. - H.10. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 40:1461 and R.S. 40:1462.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1977 (August 2012), amended LR 41:151 (January 2015).

Jill P. Boudreaux
Undersecretary

1501#012

RULE

Department of Revenue
Office of the Secretary

Louisiana Tax Delinquency Amnesty Act of 2014
(LAC 61:I.4915)

The Department of Revenue, Office of the Secretary, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt this Rule pertaining to the Louisiana Tax Delinquency Amnesty Act of 2014 (Acts 2014, No. 822) in accordance with the provisions of R.S. 47:1511. The Rule is needed to provide guidelines for implementing and administering installment plans for the 2014 Louisiana Tax Delinquency Amnesty Program.

The Department of Revenue has established a tax amnesty program, hereinafter referred to as "amnesty program," beginning on October 15, 2014 and ending November 14, 2014. The amnesty program shall apply to all taxes administered by the department except for motor fuel, prepaid cell phone sales tax, oil field restoration-oil, oil field restoration-gas, inspection and supervision fee and penalties for failure to submit information reports that are not based on an underpayment of tax. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period on forms prescribed by the secretary and who pay or enter into an installment agreement for all of the tax, half of the interest due, all fees and costs, if applicable, for periods designated on the amnesty application. The amnesty application may include issues or eligible periods that are not in dispute. The secretary reserves the right to require taxpayers to file tax returns with the amnesty application. If the amnesty application is approved, the secretary shall waive all of the penalties and half of the interest associated with the tax periods for which amnesty is applied.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 49. Tax Collection
§4915. Louisiana Tax Delinquency Amnesty Act of 2014

A. A taxpayers' application to make installment payments of a delinquent tax and its interest, penalties, and fees shall, upon approval by the secretary, enter the taxpayer into an installment agreement. In order to continue in the amnesty program, the taxpayer must make complete and timely payments of all installment payments. For the payment to be considered timely, all installment payments must be received no later than May 1, 2015.

B. All installment agreements approved by the secretary shall require the taxpayer to provide a down payment of no less than 20 percent of the total amount of delinquent tax, penalty, interest, and fees owed to the department at the time the installment agreement is approved by the secretary. Field audit and litigation are not eligible to enter into an installment agreement.

C. Every installment agreement shall include fixed equal monthly payments that shall not extend for more than six months. Applicants seeking to enter into an installment agreement with the department shall provide the following information:

1. bank routing number;
2. bank account number; and
3. Social Security number or LDR account number.

D. An installment payment will only be drafted from an account from which the taxpayer is authorized to remit payment. All payments shall be drafted through electronic automated transactions initiated by the department. Taxpayers who cannot enter into an agreement to make payment by way of automated electronic transactions shall not be eligible for an installment agreement with the department.

E. If for any reason a taxpayer subject to an installment agreement fails to fulfill his obligation under the agreement by remitting the last installment by May 1, 2015, no amnesty shall be granted and the installment agreement shall be null and void. All payments remitted to the department during the duration of the voided installment agreement shall be allocated to the oldest outstanding tax period as a regular payment. The payment will be applied in the following order: tax, penalty and interest. The taxpayer shall be obligated to pay the entirety of the delinquent tax, along with all applicable interest, penalties, and fees.

F. A taxpayer who is approved to participate in the amnesty program who is also a party to an existing installment agreement with the department may be eligible to participate in an installment agreement under the amnesty program. Upon approval by the secretary of an installment agreement under the amnesty program, the original installment agreement with the department shall be cancelled in favor of the installment agreement under amnesty.

G. The secretary may procure tax amnesty program collection services for the administration and collection of installment agreements. The fee for such services shall be in accordance with the fees authorized in R.S. 47:1516.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47: 1511 and Acts 2014, No. 822.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 41:151 (January 2015).

Tim Barfield
Secretary

1501#069

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Possession of Potentially Dangerous Wild Quadrupeds, Big Exotic Cats, and Non-Human Primates (LAC 76:V.115)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission have amended the rules and regulations governing the possession of potentially dangerous quadrupeds, big exotic cats, and non-human primates.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 1. Wild Quadrupeds
§115. Possession of Potentially Dangerous Wild Quadrupeds, Big Exotic Cats, and Non-Human Primates

A. This commission finds that possession of certain potentially dangerous quadrupeds, big exotic cats, and non-human primates poses significant hazards to public safety and health, is detrimental to the welfare of the animals, and may have negative impacts on conservation and recovery of some threatened and endangered species.

1. The size and strength of such animals in concert with their natural and unpredictable and/or predatory nature can result in severe injury or death when an attack upon a human occurs. Often such attacks are unprovoked and a person other than the owner, often a child, is the victim. Furthermore, there is no approved rabies vaccine for such animals, so even minor scratches and injuries inflicted upon humans or other animals could be deadly.

2. Responsible possession of these potentially dangerous wild quadrupeds, big exotic cats, and non-human primates necessitates that they be confined in secure facilities. Prolonged confinement is by its nature stressful to these animals and proper long-term care by experienced persons is essential to the health and welfare of these animals and to society.

3. Certain of these animals are listed as endangered species and others are so similar in appearance to endangered subspecies as to make practical distinction difficult. This similarity of appearance may provide a means to market illegally obtained endangered animals and can limit the effective enforcement of endangered species laws.

B. This commission regulation prohibits importation and private possession, and otherwise regulates certain wild quadrupeds, big exotic cats, and non-human primates as provided herein.

C.1. Except as provided herein, it shall be unlawful to import into, possess, purchase or sell within the state of Louisiana, by any means whatsoever including but not limited to transactions conducted via the internet, any of the following species or its subspecies of live wild quadrupeds, big exotic cats, or non-human primates, domesticated or otherwise (hereinafter "listed animals"):

a. black bear (*Ursus americanus*);
b. grizzly bear (*Ursus arctos*);
c. polar bear (*Ursus maritimus*);
d. red wolf (*Canis rufus*);
e. gray wolf (*Canis lupus*);
f. wolf dog hybrid (*Canis lupus* or *Canis rufus x Canis familiarus*);
g. all non-human primates;
h. the following big exotic cats:
i. tigers;
ii. lions;
iii. leopards (including, but not limited to snow leopard and clouded leopard);
iv. jaguars;
v. cheetahs;
vi. cougars or mountain lions (*Felis concolor*);
vii. all subspecies of the above listed exotic cats;
viii. hybrids resulting from cross breeding of the above listed exotic cats.

2. Holders of a potentially dangerous wild quadruped permit allowing possession of any listed animal, where the permit is valid on the effective date of this regulation, will be "grandfathered" and the permit will be renewed annually until existing permitted captive animals expire, or are legally transferred out of state, or are transferred to a suitable facility. No additional listed animals may be acquired by any means whatsoever, including breeding.

D.1. Wolf-Dog Hybrids. The prohibition against wolf-dog hybrids expired January 1, 1997. Persons are cautioned that local ordinances or other state regulations may prohibit possession of these animals. Any animal which appears indistinguishable from a wolf, or is in any way represented to be a wolf shall be considered to be a wolf in the absence of bona fide documentation to the contrary.

E. Exempted Entities. The following organizations and entities shall be exempt from this regulation, including permitting:

1. zoos accredited or certified by the American Zoo and Aquarium Association (AZA) and the Zoo of Acadiana so long as it meets the American Zoo and Aquarium Association standards for enclosures;

2. research facilities as defined in the Animal Welfare Act as found in the *United States Code* title 7, chapter 54, §2132(e), including but not limited to the University of

Louisiana at Lafayette Primate Center, the Tulane National Primate Research Center, and Chimp Haven, Inc., located in Shreveport, LA; and

3. any person transporting any listed animal through the state if the transit time is not more than 24 hours and the animal is at all times maintained within a confinement sufficient to prevent escape and contact with the public. Exhibiting the listed animal, in any manner, is prohibited;

4. circuses, limited to those temporarily in this state, offering varied performances by live animals, clowns, and acrobats for public entertainment, and which are incorporated class C licensees under chapter I of title 9 of the *Code of Federal Regulations*. Notwithstanding the above, circuses do not include entertainment that includes any listed animal in any type of wrestling, photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other;

5. Louisiana colleges or universities, for possession of a big exotic cat of the species traditionally kept by that college or university as a school mascot, after proper documentation to the department that the college or university has consistently over the years possessed a big exotic cat as its mascot.

F. Permitted Entities. The following organizations and entities may be exempted from this regulation after applying for and receiving a permit from the department to possess any listed animal under the following conditions:

1. other zoos and educational institutions not covered under Paragraphs E.1-2 above. The secretary shall determine whether to issue a permit and any conditions for the permit on a case by case basis. A *zoo*, for purposes of this Subsection, is defined as a publicly or municipally owned permanent institution which owns and maintains multiple species of wildlife, under the direction of at least one full-time professional staff member who possesses an appropriate body of knowledge and experience in zoological park management, provides its animals with appropriate care, exhibits the animals to the public on a regular basis, and has as its primary mission the exhibition, conservation, and preservation of animals in an educational and scientific manner:

a. any entity that has submitted to the department on or before July 1, 2014 an application as an other zoo or educational institution under this Subsection shall not be required to be publicly or municipally owned. Should a permit be granted under this exception, future permits shall be likewise exempted, provided that a permit had been issued for the immediately preceding year;

2. animal sanctuaries accredited or certified by the American Zoo and Aquarium Association (AZA). Permitted sanctuaries are prohibited from exhibiting, breeding, or selling any listed animal. Listed animals must be surgically sterilized or separately housed to prevent breeding. Listed animals must be housed in such a manner as to prevent public contact and in compliance with the enclosure rules provided herein in Subsection I. Permitted animal sanctuaries are prohibited from transporting these animals to any public building or place where they may come into contact with the public including, but not limited to schools, hospitals, malls, private residences, or other commercial or retail establishments.

G. Non-Human Primates

1. As provided below, the following individuals may be exempted from this regulation after applying for and receiving a permit from the department to possess a non-human primate. The permit will be for one year and must be renewed annually under the following conditions:

a. an individual who legally possesses one or more non-human primates immediately prior to the effective date of this regulation and who can prove legal ownership is authorized to keep those non-human primates but is prohibited from acquiring any additional non-human primates by any means whatsoever, including breeding;

b. the individuals listed in this Subsection must annually apply for and receive a permit from the department. The permit application shall include:

i. the name, address, telephone number, and date of birth of applicant;

ii. a description of each non-human primate applicant possesses, including the scientific name, sex, age, color, weight, and any distinguishing marks;

iii. a photograph of each non-human primate and its permanent enclosure;

iv. the physical location where the non-human primate is to be kept;

v. proof of legal ownership. (Proof of legal ownership includes original purchase documents, veterinary records, or other documentation, acceptable to the department demonstrating ownership);

vi. the microchip or tattoo number of each non-human primate;

vii. a health certificate signed by a licensed veterinarian within one year prior to the date of the application stating that the animal is free of all symptoms of contagious and/or infectious diseases at the time of the examination and that all appropriate tests and preventative measures have been performed as deemed necessary by the veterinarian;

viii. a signed release statement, on a form provided by the department, agreeing to abide by permit terms and to cooperate with LDWF personnel;

ix. a signed agreement, on a form provided by the department, indemnifying and holding harmless the state, department, and other applicable public agencies and employees, including agents, contractors, and the general public from any claims for damages resulting from the non-human primate(s);

x. a signed agreement that the permittee will be responsible for any and all costs associated with the escape, capture, and disposition of the non-human primate(s);

c. the department shall only accept applications for possession of non-human primates from individuals who have not previously possessed a permit until June 30, 2015. Thereafter, permits will only be issued for the possession of non-human primates to those individuals who were permitted in the immediately preceding year and who meet all applicable requirements of this Section.

2. Permittee must allow inspections of premises by Department of Wildlife and Fisheries employees for purposes of enforcing these regulations. Inspections may be unannounced, and may include, but are not limited to, pens,

stalls, holding facilities, records, and examination of animals necessary to determine species identification, sex, age, health, and/or implanted microchip number.

3. Permit holders must house their non-human primates in such a manner as to prevent public contact and are prohibited from transporting their non-human primate to any public building or place where the public may come into contact with the non-human primate, including, but not limited to schools, hospitals or malls.

4. Permit holders must have their non-human primates examined annually by a licensed veterinarian to insure that the animal is free of all symptoms of contagious and/or infectious diseases at the time of examination and all appropriate tests and preventative measures have been performed as deemed necessary by the veterinarian.

5. Permit holders are required to report any escapes to the department within 24 hours of discovery of the escape.

6. Permit holders are required to submit any changes to the permit information provided in the permit application within 30 days of the date those changes take effect or the permit will be considered invalid.

H. - H.4. …

5. Permittee must allow inspections of premises by Department of Wildlife and Fisheries employees for purposes of enforcing these regulations. Inspections may be unannounced, and may include, but are not limited to, pens, stalls, holding facilities, records, and examination of animals necessary to determine species identification, sex, age, health, and/or implanted microchip number.

6. - 13. …

I. Enclosure Requirements. Minimum pen/enclosure requirements are as follows:

1. bears:

a. single animal: 25 feet long x 12 feet wide x 10 feet high, covered roof;

b. pair: 30 feet long x 15 feet wide x 10 feet high, covered roof;

c. materials: chain link 9 gauge minimum;

d. safety perimeter rail;

e. pool: 6 feet x 4 feet x 18 inches deep with facilities for spraying or wetting bear(s);

2. wolf:

a. 15 feet long x 8 feet wide x 6 feet high per animal, covered roof;

b. secluded den area: 4 feet x 4 feet for each animal;

c. materials: chain link wire or equivalent;

d. safety perimeter rail;

3. big exotic cats:

a. enclosures shall be constructed and covered at the top with nine gauge steel chain link or equivalent, with tension bars and metal clamps;

b. enclosures must be well braced and securely fastened to the floor or ground and shall utilize metal clamps or braces of equivalent strength as that proscribed for cage construction;

c. enclosures shall be secured by at least two sets of doors, so that the first door must be closed before the second door is opened. The inside door to the animal enclosure must open in. These doors must remain locked at all times when unattended. The doors must be designed so that the frame, hasps and locks are of sufficient strength to restrain the exotic cat;

d. a perimeter fence of at least 8 feet in height (secondary barrier) and located a minimum of 5 feet from the enclosure sufficient to prevent unauthorized entry or direct physical contact with the exotic cat;

e. the mesh size and/or distance between bars for all enclosures and fences shall be sufficiently small to prevent escape and/or direct physical contact with the exotic cat;

f. enclosures shall include a den area or other connected housing unit in which the exotic cat may be secured for the safe servicing and cleaning of the remaining enclosure. This area shall be constructed with steel, reinforced cinder block, or concrete sufficient to withstand damage from high winds, hard rains, hail, and other natural phenomenon.

J. Penalty for Violation. Unless another penalty is provided by law, violation of these regulations will be a class two violation as defined in title 56 of the *Louisiana Revised Statutes*. In addition, upon conviction for violation of these regulations, any license/permit may be revoked and the quadrupeds or other animals seized in connection with the violation will be forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(31), R.S. 56:115, R.S. 56:171, and R.S. 56:1904(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:1356 (December 1995), amended LR 32:647 (April 2006), LR 33:1153 (June 2007), amended by House Concurrent Resolution 6 of the 2012 Regular Legislative Session, LR 38:1459 (June 2012), LR 41:152 (January 2015).

Bryan McClinton
Undersecretary

1501#040

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Removal of Abandoned Crab Traps (LAC 76:VII.367)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:322(N), the Wildlife and Fisheries Commission has amended LAC 76:VII.367 to temporarily close a portion of state inside waters to the use of crab traps in order to facilitate the removal of abandoned crab traps in these waters.

The Wildlife and Fisheries Commission has amended the provisions in LAC 76:VII.367 governing the locations of temporary crab trap closures to address problems in portions of state waters resulting from large numbers of abandoned and derelict crab traps (*Louisiana Register*, Volume 30, Number 1; Volume 31, Number 1; Volume 32, Number 2; Volume 33, Number 1; Volume 34, Number 1; Volume 36; Number 1; Volume 38, Number 1; Volume 38, Number 12; Volume 40, Number 1). The Wildlife and Fisheries Commission now amends the provisions to describe a new portion of state waters to be temporarily closed to the use of crab traps for the purpose of conducting a crab trap cleanup.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sport and Commercial Fishery
§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited from 6 a.m., Friday, February 20, 2015 through 6 a.m. Sunday, March 1, 2015 within that portion of Cameron Parish as described below.

1. From a point originating at the Louisiana/Texas state line at the mouth of the Sabine River; thence northward along the Louisiana/Texas state line through the Sabine River and Sabine Lake; thence northward along the Louisiana/Texas state line through the Sabine River to the intersection of the Sabine River and the northern shore of the Gulf Intracoastal Waterway (GIWW); thence eastward along the northern shore of the GIWW to 93 degrees 37 minutes 00 seconds West longitude; thence southward along 93 degrees 37 minutes 00 seconds West longitude to a point along the inside-outside shrimp line as defined in R.S. 56:495(A); thence westward along the inside-outside shrimp line and terminating at the Louisiana/Texas state line and mouth of the Sabine River.

B. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed areas during the closure periods shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January 2010), LR 38:146 (January 2012), LR 38:12 (December 2012), LR 40:96 (January, 2014), LR 41:155 (January 2015).

Billy Broussard
Chairman

1501#038

Notices of Intent

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.613)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §613, Calculating a Graduation Index. The revisions update and clarify policy related to the graduation index.

Title 28
EDUCATION
Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System
Chapter 6. Graduation Cohort, Index, and Rate
§613. Calculating a Graduation Index

A. For 2014-15 only (2013-14 graduates), points shall be assigned for each member of a cohort according to the following table.

Student Result	Points
HS Diploma plus (a) AP score of 3 or higher, IB Score of 4 or higher, or CLEP score of 50 or higher OR (b) Advanced statewide Jump Start credential *Students achieving both (a) and (b) will generate 160 points.	150
HS Diploma plus (a) At least one passing course grade of the following type: AP**, college credit, dual enrollment, or IB** OR (b) Basic statewide Jump Start credential *Students achieving both (a) and (b) will generate 115 points, if the passing course grade for (a) is earned in a TOPS core curriculum course. **Students must take the AP/IB exam and pass the course to earn 110 points.	110
Four-year graduate (includes Career Diploma student with a regional Jump Start credential)	100
Five-year graduate with any diploma *Five-year graduates who earn an AP score of 3 or higher, an IB score of 4 or higher, or a CLEP score of 50 or higher will generate 140 points.	75
Six-year graduate with any diploma	50
HiSET	25
Non-graduate without HiSET	0

B. Beginning in 2015-16 (2014-15 graduates), points shall be assigned for each member of a cohort according to the following table.

Student Result	Points
HS Diploma plus (a) AP score of 3 or higher, IB Score of 4 or higher, or CLEP score of 50 or higher OR (b) Advanced statewide Jump Start credential *Students achieving both (a) and (b) will generate 160 points.	150
HS Diploma plus (a) At least one passing course grade for TOPS core curriculum credit of the following type: AP**, college credit, dual enrollment, or IB** OR (b) Basic statewide Jump Start credential *Students achieving both (a) and (b) will generate 115 points. **Students must take the AP/IB exam and pass the course to earn 110 points.	110
Four-year graduate (includes Career Diploma student with a regional Jump Start credential)	100
Five-year graduate with any diploma *Five-year graduates who earn an AP score of 3 or higher, an IB score of 4 or higher, or a CLEP score of 50 or higher will generate 140 points.	75
Six-year graduate with any diploma	50
HiSET	25
Non-graduate without HiSET	0

C. The graduation index of a school shall be the average number of points earned by cohort members.

1. Starting with the graduating class of 2017-2018 (2019 SPS), only WIC-approved industry based certifications (IBCs) will be included as basic statewide credentials.

D.1.The diploma must be earned no later than the third administration of the summer retest following the fourth year of high school of the students' cohort.

a. For example, a student who finishes the fourth year of high school in 2012 must complete the assessment requirements before or during the 2014 summer test administration.

2. When related to awarding fifth year graduate points, the enrollment must be continuous and consist of at least 45 calendar days.

E. To ensure the accuracy of data used to calculate the graduation index, the calculation shall lag one year behind the collection of the data. (The index earned by the graduating class of 2012 will be used for 2013 accountability calculations.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243 (October 2010), LR 37:3201 (November 2011), LR 38:1391 (June 2012), LR 38:3109 (December 2012), LR 39:306 (February 2013), LR 39:2444 (September 2013), LR 40:1317 (July 2014), LR 41:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policies will have no effect on costs or savings to state or local governmental units.

The proposed policy revisions update and clarify policy related to the graduation index. A table related to the 2012-2013 cohort is removed and the policy updates and clarifies the timeline for Industry Based Certifications.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1501#021

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.3307)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §3307, Limited English Proficient Students. The proposed revisions align policy with assessment accommodations for limited English proficient students in grades 3-8 who speak Spanish.

Title 28
EDUCATION
Part CXI. Bulletin 118—Statewide Assessment Standards and Practices
Chapter 33. Assessment of Special Populations
§3307. Limited English Proficient Students

A. - C.1.e. …

D. Spanish language versions of math state assessments are provided for limited English proficient (LEP) students in grades 3 through 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq., and R.S. 17:24.4 (F)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1562 (July 2005), amended by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), LR 33:264 (February 2007), LR 33:1010 (June 2007), LR 36:983 (May 2010), LR 37:821 (March 2011)), LR 41:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policies will have no effect on costs or savings to state or local governmental units.

The proposed revisions align policy with assessment accommodations for limited English proficient students in grades 3 - 8 who speak Spanish and update language related to accommodations for students with disabilities.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
1501#022	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 137—Louisiana Early Learning Center Licensing Regulations (LAC 28:CLXI.Chapters 1-21)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*. Act 868 (Early

Learning Center Act) of the 2014 Regular Legislative Session transfers licensing authority from the Department of Children and Family Services (DCFS) to the Louisiana Department of Education (LDE), effective October 1, 2014. The law requires BESE to establish statewide minimum standards for the health, safety and well-being of children in early learning centers, ensure maintenance of these standards, and regulate conditions in early learning centers through a program of licensing administered by the LDE. As required by law, the LDE has worked with various stakeholders including early learning center providers (child care, head start/early head start, nonpublic), the state sanitarian, the fire marshal, the Department of Health and Hospitals, and the Department of Children and Family Services since August of 2013 to develop the proposed regulations.

Title 28
EDUCATION
Part CLXI. Bulletin 137—Louisiana Early Learning Center Licensing Regulations
Chapter 1. General Provisions
§101. Purpose and Authorization

A. The purpose of this bulletin is to set forth the rules and regulations necessary to implement the provisions of R.S. 17:407.31 et seq. that require the state Board of Elementary and Secondary Education (BESE) to establish statewide minimum standards for the health, safety and well-being of children in early learning centers, ensure maintenance of these standards, and regulate conditions in early learning centers through a program of licensing administered by the Department of Education, Licensing Division (Licensing Division).

B. The state superintendent of education (state superintendent), in order to carry out functions otherwise vested in the state superintendent by law, or by delegation of authority pursuant to law, is authorized to make, issue, rescind, and amend Licensing Division guidelines, interpretive guidance and procedures governing the early childhood licensing program administered by the Licensing Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.32.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§103. Definitions

Anniversary Date—the last day of the month in which the center's original license was issued and the date by which the license must be renewed each year.

APA—Louisiana Administrative Procedure Act found at R.S. 49:950 et seq.

Behavior Management—the ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

BESE—Louisiana State Board of Elementary and Secondary Education.

Bureau—Louisiana Bureau of Criminal Identification and Information, part of the Office of State Police within the Department of Public Safety and Corrections.

Camp—any place or center operated by any institution, society, agency, corporation, person or persons, or any other group that serves only children ages five and older and operates only when schools are not in session for the summer months or school holidays.

Capacity—the number of children the provider is licensed to care for at any given time as determined by the Licensing Division.

CBC—criminal background check.

Center—see *early learning center*.

Center staff—see *staff*.

Change of Location—change in physical address/location of the center.

Change of Ownership—a transfer of ownership of a currently licensed center that is in operation and caring for children, to another entity without a break in service to the children currently enrolled.

Child—person who has not reached age 18 or otherwise been legally emancipated.

Child Care Health Consultant—qualified health and safety professional approved by DHH to provide training, consultation, and technical assistance to out of home child care facilities and early childhood education staff (and parents) on health and safety topics.

Child Care Market Rate Survey—a survey that measures the prices charged by child care providers and paid by parents in a given child care market. The Child Care and Development Fund Programs require states to conduct child care market rate surveys.

Child Day Care Center—any place or center operated by any institution, political subdivision, society, agency, corporation, person or persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or legal custodian, on a regular basis for at least 12 1/2 hours in a continuous 7-day week.

1. If a *child day care center* provides transportation or arranges for transportation to and from the center, either directly or by contract with third parties, all hours that a child is being transported shall be included in the calculation of the hours of operation.

2. A *child day care center* that remains open for more than 12 1/2 hours in a continuous 7-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall be known as a full-time *child day care center*.

3. A *child day care center* that remains open after 9 p.m. shall meet the appropriate regulations established for nighttime care.

Child Safety Alarm—an ignition-based alarm system that voice prompts the driver to inspect the vehicle for children before exiting the vehicle.

Clock Hour—60 minutes.

Complaint—an allegation that an owner, provider, or staff person is violating any provision of these standards or laws, or engaging in conduct, either by omission or commission, that negatively affects the health, safety, or well-being of any child for which the provider has responsibility.

DAL—Division of Administrative Law.

Day Care Center—see *child day care center*.

DCFS—Department of Children and Family Services.

Department—Department of Education.

DHH—Department of Health and Hospitals.

Director—the staff who is responsible for the day-to-day operation, management, and administration of the center. For the purpose of these regulations, the term "director" means *director* or *director designee*, if applicable.

Director Designee—the individual appointed by the director to act in lieu of the director when the director is not an on-site staff person at the licensed location. This individual shall meet director qualifications.

Discipline—see *behavior management*.

Direct Supervision—physically present with visual contact at all times and available to respond immediately to the emergency needs of children.

Disqualification Period—the prescriptive period during which a center shall not be qualified to submit an application for licensure after its license has been revoked, renewal has been refused or its license has been surrendered to avoid adverse action due to failure to comply with licensing laws, regulations or minimum standards.

Early Learning Staff—see *staff*.

Early Learning Center—any child day care center, early head start center, head start center, or stand-alone prekindergarten program that is not attached to a school.

Employee—all full or part time paid staff who perform services for the center and have direct or indirect contact with children at the center.

Extra-Curricular Personnel—see *independent contractors*.

Federal Food and Nutrition Programs—federal nutrition reimbursement programs funded by the U.S. Department of Agriculture through the Louisiana Department of Education, Division of Nutrition Support.

Foster Grandparents—a program organized by an agency that recruits and trains seniors to provide one-on-one attention to a child or to assist a group of children.

Full-Time—physical presence at the center Monday through Friday for at least 32 hours.

Head Start and *Early Head Start Programs*—federally-funded early childhood care and education programs that promote and teach school readiness to children ages birth to five from low-income families and provide services in the areas of education, social services for families, nutrition, family engagement, health and mental health, as well as providing the physical plant and instructional staff members for such purposes.

Independent Contractors—individuals who are not employees of the center, but who render professional, therapeutic, or enrichment services within an early learning center and who are not required to be under the supervision of center staff. *Independent contractors* include, but are not limited to, extra-curricular personnel (dance instructors, gymnastic or sports instructors, computer instructors, etc.), therapeutic professionals (speech therapists, nutritionists, early interventionists, nurses and other licensed health care professionals), local school district staff, Department of Education, Office of Early Childhood staff, contracted bus drivers, electricians and maintenance personnel, and other outside contractors.

Infant—a child who has not yet reached his/her first birthday.

License—any *license* issued by the Louisiana Department of Education, Licensing Division to operate an early learning center.

License Type—the type of license applied for or held by an early learning center, which include type I, type II, and type III licenses.

Licensing Division—Louisiana Department of Education, *Licensing Division*.

Mandated Reporter—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training or supervision of a child, such as a public or private school teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, any other child care institution staff member, licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under *Children's Code* article 603 or other applicable law.

Medication—all internally and externally administered drugs, whether over-the-counter or prescribed.

Monitor—staff with specific transportation-related responsibilities that include assisting the driver in ensuring the safety of children while they ride in, board, or exit a vehicle, and during transportation emergencies.

Nighttime Care—care provided after 9 p.m. and prior to 5 a.m. in which no individual child remains for more than 24 hours in one continuous stay.

Non-Vehicular Excursion—any activity that takes place outside of the licensed area (play yard and premises), that is within a safe, reasonable, walking distance, and that does not require transportation in a motor vehicle. This does not include walking with children to and from schools.

Notice—written *notice* to an early learning center is considered given:

1. when it is sent by email or fax to the email address or fax number furnished by the center on the center's current application for licensure or renewal;
2. when it is hand-delivered to a staff member at the center; or
3. on the fifth calendar day after it was mailed to the mailing address furnished by the center on the center's current application for licensure or renewal.

Office of Early Childhood—Louisiana Department of Education, *Office of Early Childhood*.

Office of Public Health—Louisiana Department of Health and Hospitals, *Office of Public Health*.

Owner or *Operator*—the individual who exercises ownership or control over an early learning center, whether such ownership or control is direct or indirect.

Parent—*parent* or custodian.

Posted—prominently displayed in a conspicuous location in an area accessible to and regularly used by parents.

Prekindergarten Programs—

1. per R.S. 17:24.8(A), the youngest age at which a child may enter prekindergarten at a local public school is four years on or before September 30 of the calendar year in which the school year begins;
2. per R.S. 17:24.8(B), the youngest age at which a child may enter prekindergarten at a BESE-approved nonpublic school is 3 years old by September 30 of the year in which the child enrolls in prekindergarten.

Premises—buildings and land upon which buildings sit, including but not limited to play yards and parking areas.

Providers—all owners, operators and directors of a center.

Related or *Relative*—natural or adopted child or grandchild of the caregiver or a child in legal custody of caregiver.

Rest Time—a daily period for children over age 12 months during which children are placed on mats or cots or in cribs as age appropriate.

Staff—all full-time or part-time, paid or non-paid individuals that perform services for the early learning center and have direct or indirect contact with children at the center. *Staff* includes the director, child care staff, and any other employees at the center such as the cook, housekeeper, driver, substitutes, secretary, bookkeeper, and foster grandparents, but does not include extra-curricular personnel, therapeutic professionals and other independent contractors.

Staff-in-Charge—the on-site staff member appointed by the director as responsible for supervising the operation of the center during the temporary absence of the director or during nighttime hours.

State Central Registry—repository within the Louisiana Department of Children and Family Services (DCFS) that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFS.

State Superintendent—Louisiana *state superintendent* of education.

Student Trainee—a student who is at least age 16 and present in the center as an educational course requirement. A *student trainee* shall not be left alone with children and shall not counted in the child to staff ratio.

Supervision—the function of observing, overseeing, and guiding a child or group of children, that includes awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed. *Supervision* requires physical presence, accountability for care of the children, knowledge of activity requirements, and knowledge of the abilities and needs of the children.

Temporary Absence—absence for running errands, attending conferences, etc.

Therapeutic Professionals—see *independent contractors*.

Time-Out—technique for temporarily separating a child when inappropriate behavior has occurred, and is intended to give a child time to calm down, thereby discouraging such behavior.

Transportation—the arranging or providing of *transportation* of children, whether center-provided, parent-provided, or contract-provided, for any reason, including daily *transportation*, *transportation* for field trips, or *transportation* for any other activity that takes place away from the licensed center.

Unlicensed Operation—the operation of any early learning center at any location, without a valid current license issued by the Louisiana Department of Education, Licensing Division.

Visitor—anyone who enters an early learning center other than the parent of an enrolled child, center staff, volunteers, extracurricular personnel, therapeutic professionals and other independent contractors, and in the case of a church or school, any other routine employees, including but not limited to a pastor, principal or teacher.

Volunteer—a full or part-time non-paid staff member.

Water Activity—a water-related activity in which children are in, on, near and accessible to, or immersed in, a body of water, including but not limited to a swimming pool, wading pool, water park, river, lake, or beach.

Water Play Activity—water-related activity in which there is no standing water, including but not limited to fountains, sprinklers, water slip-and-slides and water tables.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.31 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 3. Licensure

§301. Requirement of Licensure

A. All early learning centers shall be licensed prior to beginning operations in Louisiana.

B. A prekindergarten program operated by a public school serving children in grades kindergarten and above, and in which all children have not reached age 4 by September 30 of the current school year, shall be licensed.

C. A prekindergarten program operated by a private school serving children in grades kindergarten and above, and in which all children have not reached age 3 by September 30 of the current school year, shall be licensed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.34 and R.S. 17:407.24.8.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§303. Exemptions from Licensure

A. A public or non-public day school serving children in grades kindergarten and above, including any pre-kindergarten attached thereto, except as provided in §301.B and C, is exempt from the provisions of this bulletin.

B. Camps and all care given without charge are exempt from the provisions of this bulletin.

C. A center operated by a recognized religious organization that is qualified as a tax-exempt organization under §501(c) of the *Internal Revenue Code* and that does not operate more than 24 hours in a continuous 7-day week shall not be considered an early learning center for purposes of this bulletin.

D. Nothing in this bulletin shall apply to children in programs licensed or operated by the Department of Health and Hospitals (DHH) or the Department of Children and Family Services (DCFS).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.35.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§305. Operating Without a License; Penalties

A. Whoever operates any early learning center without a valid license shall be fined by the Licensing Division not less than $1,000 per day for each day of such offense.

B. If an early learning center is operating without a valid license, the Licensing Division shall file suit for injunctive relief in the district court in the parish in which the center is located to enjoin the owner or operator from continuing the violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.37.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§307. Types of Licenses

A. A "type I license" is the type of license issued to an early learning center that is owned or operated by a church or religious organization that is qualified as a tax exempt organization under §501(c) of the *Internal Revenue Code* and that receives no state or federal funds directly or indirectly from any source.

1. Grandfathering Clause. A "type I license" is also the type of license issued to any early learning center holding a "class B" license on October 1, 2014, provided the center receives no state or federal funds directly or indirectly from any source. "Class B" licenses held by other than tax exempt church or religious organizations on October 1, 2014 shall be grandfathered in as type I centers for the life of the existing license. However, if a type I license held by other than a tax exempt church or religious organization expires, is revoked, or is terminated for any reason, or if a new license is required for any reason, including but not limited to a change in location or ownership, the center shall not be eligible for a new type I license and shall apply for either a type II or type III license.

2. No early learning center holding a type I license shall directly or indirectly receive any state or federal funds from any source.

3. If an early learning center holding a type I license directly or indirectly receives any state or federal funds, its license is immediately revoked.

B. A "type II license" is the type of license issued to an early learning center that either receives no state or federal funds directly or indirectly from any source or whose only source of state or federal funds is from U.S. Department of Agriculture's food and nutrition programs, hereinafter referred to in this bulletin as "federal food and nutrition programs."

1. No early learning center holding a type II license shall directly or indirectly receive any state or federal funds from any source, other than those funds received solely for federal food and nutrition programs.

2. If an early learning center holding a type II license directly or indirectly receives any state or federal funds from any source, other than those received solely for food and nutrition programs, its license is immediately revoked.

C. A "*type III license*" is the type of license issued to an early learning center that directly or indirectly receives state or federal funds from any source other than the federal food and nutrition programs.

1. Type III early learning centers shall meet the performance and academic standards of the Early Childhood Care and Education Network regarding kindergarten readiness as determined by BESE.

D. Nothing in this Section shall prevent an early learning center otherwise qualified for a type I license to voluntarily seek a type II or type III license, or an early learning center otherwise qualified for a type II license to voluntarily seek a type III license, provided that such early learning center meets the standards set forth for such license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.36.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§309. Term of License

A. The Licensing Division is authorized to determine the period for which a license shall be valid. A license is valid for the period for which it is issued unless it is revoked or suspended by the Licensing Division for non-compliance with the licensing laws, regulations or minimum standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407. 39(A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§311. Posting of License

A. Each early learning center shall display its current license in a prominent place at the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§313. Annual Licensure Fee

A. There shall be an annual licensure fee for each early learning center based on the licensed capacity of the center.

B. Annual Licensure Fees

Licensed Capacity	Annual License Fee
15 or fewer children	$25
16-50 children	$100
51-100 children	$175
101 or more children	$250

C. Pursuant to R.S. 17:407.39(G), annual licensure fees shall not apply to type I centers operated by churches or religious organizations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39(E).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§315. Inspections

A. The Licensing Division, through its duly authorized agents, shall inspect at regular intervals not to exceed one year, and as deemed necessary by the Licensing Division and without previous notice, all early learning centers subject to the provisions of this bulletin.

B. Whenever the Licensing Division is advised or has reason to believe that any person, agency or organization is operating a non-exempt early learning center without a license, the Licensing Division shall initiate an investigation to ascertain the facts.

C. Whenever the Licensing Division is advised or has reason to believe that any person, agency or organization is operating in violation of licensing laws, regulations or minimum standards, the Licensing Division shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Licensing Division shall be referred to the appropriate agencies, and law enforcement personnel if applicable.

D. The Licensing Division may apply for an administrative search warrant to obtain entry to an early learning center, if necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.43.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:

§317. Transitional Provisions

A. Effective immediately, any early learning center possessing a class B license that receives no state or federal funds directly or indirectly from any source is deemed to be a type I center and its current license remains valid for the term stated on the face of the license. A new license shall be issued upon renewal of the existing license.

B. Effective immediately, any early learning center possessing a class A or class B license that either receives no state or federal funds directly or indirectly from any source or whose only source of state or federal funds is from federal food and nutrition programs is deemed a type II center and its current license remains valid for the term stated on the face of the license. A new license shall be issued upon renewal of the existing license.

C. Effective immediately, any early learning possessing a class A or class B license that receives state or federal funds directly or indirectly from any source other than the federal food and nutrition programs is deemed a type III center and its current license remains valid for the term stated on the face of the license. A new license shall be issued upon renewal of the existing license.

D. Nothing in this Section shall prevent an early learning center otherwise qualified for a type I license from voluntarily seeking a type II or type III license, or an early learning center otherwise qualified for a type II license from voluntarily seeking a type III license, provided that such center meets the standards set forth for such licenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.36 and R.S. 17:407.38(c).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§319. Waivers

A. The state superintendent, pursuant to authority delegated by BESE, may, in specific instances, waive compliance with a minimum standard or regulation if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of staff and children are not imperiled. If it is determined that the center or agency is meeting or exceeding the intent of the standard or regulation, the standard or regulation may be deemed to be met.

B. Minimum licensing standards shall not be waived unless the state superintendent determines, upon clear and convincing evidence, that the demonstrated economic impact is sufficiently great to make compliance impractical for the center despite diligent efforts, and alternative means have been put in place that ensure the health, safety, and well-being of children and staff.

C. An application for a waiver shall be submitted in writing to the Licensing Division using the request for waiver form.

D. Any waiver is issued at the discretion of the state superintendent and may be revoked by the state superintendent at any time, either upon violation of any condition attached to it or upon the determination of the state superintendent that continuance of the waiver is no longer in the best interest of children in care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 5. Ownership of Early Learning Centers

§501. Definitions

Corporation—any entity incorporated in Louisiana, or incorporated in another state and registered with the secretary of state in Louisiana, and legally authorized to do business in Louisiana.

Individual Owner—a natural person who directly owns a center without setting up a juridical entity.

Juridical Entity—a corporation, partnership, limited-liability company, church, university or governmental entity

Natural Person—a human being.

Ownership—the right that confers on a person direct, immediate and exclusive authority over a thing. The owner of a thing may use, enjoy and dispose of it within the limits and under the conditions established by law.

1. *Direct Ownership*—when the immediate owner is a natural person who exercises control personally rather than through a juridical entity.

2. *Indirect Ownership*—when the immediate owner is a juridical entity.

Partnership—any general or limited *partnership* licensed or authorized to do business in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.31 et seq., R.S. 17:407.41, and R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§503. Individuals and Entities as Owners for Licensing Purposes

A. Individuals by organizational type who are considered owners for licensing purposes:

1. *individuals—individual* and spouse, unless the business is the separate property of the licensee acquired before his or her marriage, acquired through a judicial separation of property agreement or acquired via a judicial termination of the community of aquets and gains;

2. *partnerships*—all limited or general partners and managers, including but not limited to all persons registered as limited or general partners in the Secretary of State's Corporations Division;

3. *head start centers*—individual responsible for supervising center directors;

4. *church-owned, government entity,* or *university-owned*—any clergy member or board member that is present in the early learning center during the hours of operation or when children are present. Clergy or board members not present in the early learning center shall complete a statement attesting to such;

5. *corporations* (includes *limited liability companies*)—

a. any person who has 25 percent or greater share in the ownership or management of the business; or

b. any person who has less than a 25 percent share in the ownership or management of the business and meets one or more of the following criteria:

i. has unsupervised access to the children in care at the center;

ii. is present in the center during hours of operation;

iii. makes decisions regarding the day-to-day operations of the center;

iv. hires or fires staff including the director; or

v. oversees staff or conducts personnel evaluations of the staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.31 et seq., R.S. 17:407.41, and R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§505. Prohibitions

A. Criminal Offenses. No person who has been convicted of, or pled guilty or nolo contendere to any offense listed in R.S. 15:587.1(C), shall directly or indirectly own, operate, or participate in the governance of an early learning center.

B. Crimes of Fraud. In addition, neither an owner, nor a director, nor a director designee shall have been convicted of, or pled guilty or nolo contendere to any of the following crimes of fraud: 18 U.S.C. 287, 18 U.S.C. 1341, R.S. 14:67.11, R.S. 14:68.2, R.S. 14:70, R.S. 14:70.1, R.S. 14:70.4, R.S. 14:70.5, R.S. 14:70.7, R.S. 14:70.8, R.S. 14:71, R.S. 14:71.1, R.S. 14:71.3, R.S. 14:72, R.S. 14:72.1, R.S. 14:72.1.1, R.S. 14:72.4, R.S. 14:72.5, R.S. 14:73.5, and R.S. 14:133.

C. State Central Registry in DCFS. No individual whose name is recorded on the state central registry within DCFS as a perpetrator for a justified (valid) finding of abuse or neglect of a child pursuant to R.S. 46:1414.1 shall directly or indirectly own, operate, or participate in the governance of an early learning center, unless the individual has a current determination from DCFS indicating that he or she does not pose a risk to children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§507. Criminal Background Checks for Owners

A. All owners of an early learning center shall provide the center documentation of a satisfactory fingerprint based criminal background check (CBC) or provide the center information, signatures and fingerprints necessary for the center to obtain a CBC. A copy of a CBC shall be submitted for each owner with an initial application for licensure and the center shall have copies of said documentation on-site at all times and available for inspection upon request by the Licensing Division.

1. CBC from Bureau. An early learning center may request a CBC from the Louisiana Bureau of Criminal Identification and Information (bureau) for any owner by submitting a request to the bureau that shall be made on a form prepared by the bureau, signed by a responsible officer or official of the center, and include a statement signed by the person about whom the request is being made giving permission for such information to be released and the person's fingerprints in a form acceptable to the bureau.

2. Certified Copy of Individual's CBC. An owner of a center may provide a certified copy of his/her CBC obtained from the bureau to the center, and it shall be accepted for a period of one year from the date of issuance by the bureau. Prior to the one year expiration of an owner provided certified CBC, a new satisfactory fingerprint based CBC shall be obtained by the center or the person is no longer eligible to own, operate, or participate in the governance of the center.

3. Affidavits for Specified Owners. If a person owns less than a 25 percent share in the ownership or management of an early learning center and does not meet one or more of the criteria listed in §503.A.5.b, said owner may submit a signed, notarized affidavit to the center in lieu of providing a CBC. The affidavit shall acknowledge that the individual has less than a 25 percent share in the ownership or management of the early learning center and does not meet any of the criteria listed in §503.A.5.b.

B. New members and owners that are to be added to a partnership, church, corporation, limited liability company or governmental entity, where such change does not constitute a change in ownership for licensing purposes, shall provide the center with documentation of a satisfactory CBC in the same manner as original owners and members.

C. A CBC is satisfactory for purposes of this Bulletin if it shows no arrests for any enumerated offense, or if an arrest is shown on the CBC for any excludable offense, the CBC or documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction. A plea of guilty or nolo contendere shall be deemed to be a conviction.

D. If a CBC shows that any owner, operator or other participant in the governance of the center has been convicted of or pled guilty or nolo contendere of any enumerated offense under R.S. 15:587.1(C), or those crimes of fraud listed in §505.B, the center, upon receipt of the result, shall submit the information to the Licensing Division within 24 hours or no later than the next business day, whichever is sooner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§509. State Central Registry Disclosure Forms for Owners

A. An early learning center shall obtain a copy of a completed state central registry disclosure form indicating no justified (valid) finding of abuse or neglect, or a current finding by the DCFS indicating that the individual does not pose a risk to children, for each owner with its initial application for a license, and the center shall have said documentation on-site at all times and available for inspection upon request by the Licensing Division.

B. All owners of an early learning center shall report on the state central registry disclosure form prior to being on the premises of the center, and shall update the report annually, and at any time upon request by the Licensing Division, whether or not the individual's name is currently recorded on the state central registry for a justified finding of abuse or neglect, or shall submit a current finding by the DCFS indicating that the individual does not pose a risk to children.

C. Any state central registry disclosure form that is maintained by an early learning center is subject to the confidentiality provisions of R.S. 46:56(F) pertaining to investigations of abuse and neglect.

D. New members and owners to be added to a partnership, church, corporation, limited liability corporation or governmental entity, where such change does not constitute a change in ownership for licensing purposes,

shall provide a completed state central registry disclosure form or a current finding by the DCFS indicating that the individual does not pose a risk to children in the same manner as original owners and members.

E. Within 24 hours or no later than the next business day, whichever is shorter, of current owners receiving notice of a justified (valid) finding of child abuse and/or neglect against them, an updated state central registry disclosure form shall be completed by the owner and submitted to Licensing Division.

1. The owner shall request a risk evaluation assessment from DCFS in accordance with LAC 67:I.305 within 10 calendar days from completion of the state central registry disclosure form or the license shall be revoked.

2. Immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner, at any and all times when he/she is in the presence of a child or children, shall be directly supervised by a paid staff (employee) of the center. Under no circumstances may an owner with a justified finding be left alone and unsupervised with a child or children pending the determination by DCFS that the owner does not pose a risk to children.

3. Any owner with a justified (valid) finding of abuse and/or neglect on the state central registry must submit, together with the disclosure form required above either:

a. a written, signed, and dated statement to Licensing Division acknowledging that they are aware of the supervision requirements and understand that under no circumstances are they to be left alone and unsupervised with a child and that they shall be directly supervised by a paid staff (employee) of the center; or

b. a written, signed, and dated statement to Licensing Division that he/she will not be on the premises of the center at any time when a child is present nor during the center's hours of operation.

4. If DCFS determines that the owner poses a risk to children, the center shall no longer be eligible for licensure and an existing license shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 7. Licensing Process and Procedures

§701. Initial Application Process

A. Forms. Applications for licensure of new early learning centers shall be made to the Licensing Division on forms furnished by the Licensing Division. See the Department of Education's website for current forms and for directions as to how and where applications for licensure may be submitted.

B. Each center shall provide a current email address to the Licensing Division on its initial application for licensure. The center shall maintain a current email address and notify the Licensing Division immediately upon a change in such email address by submitting a change of email address form to amend the existing licensing application. All communication from the Licensing Division shall be sent via email to the most recent email address provided to the Licensing Division on the center's current application for licensure or renewal.

C. Initial Licensing Packet. After the center's location has been established, a completed initial licensing packet shall be submitted to the Licensing Division.

D. Review of Licensing Packet

1. If a submitted application is incomplete, the Licensing Division shall notify the applicant of the missing information.

a. The applicant shall have 21 calendar days from receipt of notification to submit the additional information.

b. If the Licensing Division does not receive the additional information within 14 calendar days of notification, the application shall be closed and the application fee shall be forfeited.

c. Once an application has been closed, an applicant still interested in obtaining a license must submit a new application and application fee.

2. If the application is complete, the Licensing Division will notify the applicant and will request the Office of State Fire Marshall, city fire (if applicable), Office of Public Health, and Office of Early Childhood to make an inspection of the center, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals.

a. Upon receipt of notification that an application is complete, the applicant has 45 calendar days in which to coordinate an on-site inspection of the center by the Licensing Division.

b. If the applicant fails to coordinate the inspection within 45 calendar days, the application shall be closed and the application fee shall be forfeited

c. Once an application has been closed, an applicant still interested in obtaining a license must submit a new application and application fee.

E. Initial Licensure. A license shall be issued on a completed initial application when the following items have been met and written verification has been received by the Licensing Division:

1. Office of State Fire Marshal approval;
2. Office of Public Health approval;
3. city fire approval, if applicable;
4. zoning approval, if applicable;
5. Office of Early Childhood approval, if type III center;
6. full licensure fee paid;
7. licensure inspection verifying compliance with all minimum standards;
8. satisfactory criminal background check for all owners, operators, and staff; and
9. completed state central registry disclosure forms for all owners, operators, and staff indicating no justified (valid) finding of abuse and/or neglect, or documentation from DCFS indicating that the owner, operator, or staff person does not pose a risk to children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§703. Initial Inspection Process

A. An initial licensing inspection, including a measurement of the indoor and outdoor enclosed space, shall be conducted at the center to assure compliance with all licensing laws, regulations and minimum standards.

1. If the center is in operation in violation of the law, the initial licensing inspection shall not be conducted, the application shall be denied and the Licensing Division shall pursue appropriate legal remedies.

2. If the initial inspection indicates that an early learning center is in compliance with all licensing laws, regulations and minimum standards, the Licensing Division may issue a license.

3. If an initial inspection indicates that an early learning center is in compliance with all minimum standards, except the following, the center will be allowed 90 calendar days from receipt of the initial completed application to submit documentation of compliance with the following, and the application may be denied if the information is not received within the 90 calendar days:

a. Office of State Fire Marshal approval;

b. city fire approval, if applicable;

c. Office of Public Health approval;

d. Office of Early Childhood Approval, if type III center;

e. documentation of a satisfactory fingerprint based criminal background check for all staff not previously provided; and

f. documentation of a completed state central registry disclosure form noting indicating no justified (valid) finding of abuse and/or neglect of a child or a finding from DCFS that the person does not pose a risk to children for all staff not previously provided.

B. Once it has been determined that a center is in compliance with all licensing laws, regulations and minimum standards, the Licensing Division shall notify the center of its total licensure fee based on its capacity.

1. The $25 application fee shall be applied towards the total licensure fee.

2. The total licensure fee shall be due prior to the issuance of a license, and no later than 90 calendar days from receipt of the initial completed application packet.

3. Pursuant to R.S. 17:407.39(G), the annual licensure fee shall not apply to type I centers owned or operated by churches or religious organizations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§705. Access

A. An early learning center shall allow the Licensing Division staff access to the center, the children, and all files and records at any time during any hours of operation or any time a child is present.

B. Licensing Division staff shall be allowed to interview any center staff person deemed necessary by the Licensing Division.

C. Licensing Division staff shall be admitted into a center immediately and without delay and shall be given free access to all areas of a center, including its grounds.

D. If any portion of a center is set aside for private use by an owner of the center, Licensing Division staff shall be permitted to verify that no children are present in that portion of the center and that such private areas are inaccessible to children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.43.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§707. Fees

A. All fees shall be paid by money order, certified check, government check, or electronic payment where available, and are non-refundable. Payments shall be made to the Louisiana Department of Education, Licensing Division.

1. Administrative Fees

a. An administrative fee of $25 shall be submitted with each application for initial licensure. This fee shall be applied toward the total licensure fee, which is due prior to the issuance of an initial license, if applicable.

b. An administrative fee of $25 shall be submitted for any change that requires the issuance of a new license or the reissuance of a current license outside of the regular renewal of the license. Some examples include changes in capacity, name, age range, and transportation.

c. An administrative fee of $5 is required to issue a duplicate license with no changes.

d. All early learning centers are required to pay administrative fees.

2. Annual Licensure Fees

a. The full licensure fee based on licensed capacity, as provided in §313, shall be submitted prior to the issuance of an initial license and shall be submitted with all renewal applications.

b. The full licensure fee based on licensed capacity shall be submitted with an application for a change of ownership, location or type of license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39 and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§709. Validity of Licenses

A. A license shall apply only to the location stated on the license and shall not transfer from one location to another or from one owner to another.

B. If the location or owner of an early learning center changes, the license becomes null and void.

C. When a business is sold, discontinued, the operation has moved to a new location, or the license has been revoked, the current license immediately becomes null and void.

D. A new application shall not be processed if an application or license is currently on file with the Licensing Division for the same location, with the exception of a change of ownership application

E. Two licenses shall not be issued simultaneously for the same physical address.

F. All early learning care and education provided at a physical address shall be included under one license.

G. If an early learning center operates summer and/or holiday camps at the location, such care shall be included under a single license for the location.

H. All new construction or renovation of a center requires approval from the Office of State Fire Marshal, the Office of Public Health and the Licensing Division prior to occupying the new or renovated space.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39(C) and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§711. Renewal Applications

A. A license must be renewed by the last day of the month in which the current license expires.

B. An application for renewal of a license shall be submitted to the Licensing Division on a form furnished by the Licensing Division.

C. Each center is solely responsible for obtaining the form to apply for renewal of a license and timely applying for renewal. Notice of time for renewal shall not be sent by the Licensing Division.

D. Renewal applications should be submitted prior to the first day of the month in which the current license expires.

E. If a complete renewal application, including the total annual licensure fee and all required documentation, is not received by or postmarked by the last day of the month in which the license expires, the license expires and shall not be renewed.

F. If a license expires, the early learning center shall cease operation by close of business on the expiration date stated on the license. An application for a new license shall be required if the owner desires to resume operations at the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40 and R.S. 17:407.43.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§713. Renewal and Other Inspection Procedures

A. Annual inspections and current approvals by the Office of Public Health, Office of State Fire Marshal, city fire (if applicable), Office of Early Childhood (if type III center) and the Licensing Division shall be required before the expiration of an existing license.

1. Required approvals from these agencies may be extended by such authorized agencies through written communication with the center or the Licensing Division.

2. A renewal inspection by the Licensing Division is similar to the initial licensing inspection.

a. Documentation of the previous 12 months of activities at a center shall be available for review during renewal and other inspections.

B. After initial licensure, inspections shall be conducted as deemed necessary by the Licensing Division at regular intervals not to exceed one year, and without notice to the early learning center.

C. The director shall have an opportunity to review inspection deficiencies (if any) in consultation with Licensing Division staff.

1. If the director is not present at the center or is unable or unwilling to review the inspection deficiencies, the Licensing Division staff shall review with any staff at the center.

2. If Licensing Division staff is unable to conduct such a review due to the absence or refusal of staff to participate, the licensing staff shall leave a copy of the deficiencies at the center, and this shall constitute notice of the deficiencies to the center and its owners and director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 9. Changes Requiring a New License

§901. Change in Location

A. Change in Location. When a center changes location, it is considered a new operation, and a new application and fee for licensure must be submitted and a new license obtained, prior to opening at the new location.

B. Temporary Change in Location

1. If a currently licensed center closes for reasons, including but not limited to fire on the premises or structural damages to the center, and the children are relocated to a temporary location until repairs have been made, it is considered a new operation and a new license is required prior to opening at the new temporary location.

2. The license at the existing location shall not transfer to the temporary location. The existing license shall be closed on the last day care was provided at that location.

3. Any change of location, however temporary, renders the license for the existing center null and void.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39 and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§903. Change of Ownership

A. When a center changes ownership, the current license is not transferable.

B. Prior to the ownership change, the new owner shall submit a new application and fee for licensure and obtain a new license.

C. Any of the following constitute a change of ownership:

1. change in federal tax ID number;
2. change in state tax ID number;
3. change in profit status;
4. any transfer of the center from an individual or juridical entity to any other individual or juridical entity;
5. termination of child care services by one owner and beginning of services by a different owner without a break in services to children; and
6. addition of an individual to the existing ownership on file with the Licensing Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39 and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§905. Change in License Type

A. Any early learning center holding a type III license that intends to change its license type at any time during the following calendar year shall notify the Licensing Division of its intent to change license type no later than December first of the preceding year.

B. When a center changes license type, the following information shall be submitted to the Licensing Division prior to the issuance of a new license:

1. written request from the center;
2. full licensure fee; and
3. verification of compliance with current early learning center regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.36 and R.S. 17:407.38-39.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§907. Notification of Temporary or Permanent Closure

A. A center shall notify the Licensing Division in writing of a temporary closure (closure of more than 14 calendar days, but less than 30 calendar days) within one day of closure of the center.

B. The provider shall notify the Licensing Division in writing of a permanent closure of center (closure of more than 30 calendar days) within seven calendar days of closure of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39 and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 11. Operating Violations and Incidents; Fines; Appeals

§1101. Non-Critical Operating Violations

A. When non-critical violations are identified during an on-site inspection, the Licensing Division may allow the center an opportunity to immediately remedy the violation or deficiency, if the Licensing Division determines that allowing such remedy does not endanger the health, safety, or well-being of any child. The Licensing Division may consider the remedy as acceptable corrective action.

AUTHORITY NOTE: Promulgated in accordance with .S. 17:407.39 and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1103. Critical Incidents and Required Notifications

A. An early learning center shall make immediate notification to emergency personnel, law enforcement as applicable, and other appropriate agencies for the following types of critical incidents involving children in care:

1. death;
2. serious injury or illness that required medical attention;
3. reportable infectious diseases and conditions listed in LAC 51.II.105; and
4. any other significant event relating to the health, safety, or well-being of any child, including but not limited to a lost child, an emergency situation, fire or other structural damage, or closure of the center.

B. The parent shall be contacted immediately following any immediate notifications made under Subsection A.

C. The Licensing Division and other appropriate agencies shall be notified via email within 24 hours of the incident.

D. The Licensing Division shall be notified by written report within 24 hours of the incident or the next business day. This written notification shall be made on the Licensing Division's critical incidents report form and shall contain all information requested on the form.

E. Reporting deadlines may be adjusted in the event of a natural catastrophe and/or disaster, as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1105. Identified Critical Violations and Fines

A. For violations related to the following critical licensing standards, when such violation does not pose an imminent threat to the health, safety, rights, or welfare of a child, the Licensing Division may issue a written warning in lieu of revoking or refusing to renew the license:

1. Supervision (§1713);
2. Criminal History Records Check (§507, §1703);
3. State Central Registry Disclosure (§509, §1705);
4. Child to Staff Ratios (§1711);
5. Motor Vehicle Passenger Checks (§2107); and
6. Failure to Report Critical Incidents (§1103).

B. Where such a violation does not result in the revocation of or refusal to renew a license, the Licensing Division shall issue a written warning/notice of violation of the standards listed in Subsection A that shall include:

1. a corrective action plan (CAP) that outlines the required actions which shall be implemented or completed immediately; and
2. notice that failure to timely take the required action may result in the assessment of a civil fine or the revocation of or refusal to renew the license, or both.

C. Second Violation or Deficiency. If the CAP is not timely implemented or if a second violation related to the same standard occurs within a 24-month period, and does not result in the revocation of or refusal to renew a license, the Licensing Division shall issue a written notice of violation that:

1. may include the requirement to take additional corrective action; and
2. may include the assessment of a civil fine of up to $250 per day for each day of the violation, not to exceed $2,000 within a consecutive 12-month period; and
   a. the factors to be used in determining the type of sanction imposed include the severity of the risk, actual harm and mitigating circumstances, failure to implement a corrective action plan, history of noncompliance, continuing and repeat deficiencies, good-faith effort to comply and any other relevant factors;
3. shall include notice of the right to request departmental reconsideration if a civil fine/sanction is assessed; and that failure to request departmental consideration shall result in the loss of any further right to appeal the civil fine/sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1107. Departmental Reconsideration of Assessment of Fine

A. A request for departmental reconsideration of an assessment of fine for a violation of the licensing standards listed in §1105.A must be received by the Licensing Division within 10 calendar days of the center's receipt of a written notice of assessment of fine.

B. If a request for departmental reconsideration is not timely received by the Licensing Division, the center shall not have any further right to appeal the assessment of fine.

C. A request for departmental reconsideration shall:

1. include a copy of the original assessment of fine;
2. provide any new information, if applicable; and
3. provide specific reasons as to why the Licensing Division should reconsider the assessment of fine.

D. The Licensing Division shall provide notice to a center in writing of its decision after reconsidering the assessment of fine.

E. If the Licensing Division determines that the assessment of fine is justified, the Licensing Division shall provide the center with written notice of the decision that includes notice of the center's right to request an appeal to the Division of Administrative Law (DAL) within 15 calendar days of receipt of said notice and the procedures for requesting an appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1109. Administrative Appeal of Assessment of Fine

A. A written request for an appeal to the Division of Administrative Law (DAL) of a civil fine for a violation of the licensing standards listed in §1105.A must be received by the Licensing Division within 15 calendar days of the center's receipt of notice of the Licensing Division's decision upon reconsideration.

B. The written request for an appeal to the DAL shall include:

1. a copy of the original assessment of fine;
2. a copy of the decision from the Licensing Division upon reconsideration; and
3. the specific reasons the center believes the decision of the Licensing Division was reached in error.

C. The Licensing Division shall notify the DAL of an appeal request within 10 calendar days of receipt of the request.

D. The DAL shall conduct a hearing in the matter in accordance with R.S. 17:407.46 and the Administrative Procedure Act found at R.S. 49:950 et seq.

E. The appeal shall be suspensive.

F. During the pendency of an appeal, the center may continue to receive funding for services provided to those eligible children as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1111. Payment of Fines

A. Fines for violations of critical licensing standards listed in §1105.A are due within 30 calendar days of receipt of written notice of assessment of fines, unless the center timely submits a request for departmental reconsideration.

B. If the Licensing Division notifies a center that its decision upon reconsideration is that the original decision is justified, the fine remains due within 30 calendar days of the original notice of assessment of fines or within 14 calendar days of notice of the decision upon reconsideration, whichever is later, unless the center timely submits a request for an administrative appeal to the Licensing Division.

C. If the department timely receives a request for an administrative appeal for an assessment of fines based on a violation of the critical licensing standards listed in §1105.A and said assessment is affirmed by the DAL, the fine shall be due and payable within 30 calendar days of receipt of notice of the decision by the DAL, unless the center timely seeks judicial review of the administrative decision.

D. If a center timely seeks judicial review of the administrative decision, and judicial review is denied or dismissed, the fines shall be due and payable within 30 calendar days of the denial or dismissal.

E. If a center does not timely pay a fine for a violation of the critical licensing standards listed in §1105.A:

1. its license may be immediately revoked;
2. the Licensing Division shall refer uncollected fines to the Office of the Attorney General for collection, and the organization owing the fine shall be assessed, and shall be required to pay, the additional collection fee assessed by the Office of the Attorney General;
3. interest shall begin to accrue on a fine at the current judicial rate on the day following the day the fine becomes due and payable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 13. Denial, Revocation or Non-Renewal of License

§1301. Reasons for Denial, Revocation or Refusal to Renew

A. The following is an illustrative, but not exclusive, list of reasons that an application for licensure may be denied or a license may be revoked or renewal refused:

1. violation of any provision of R.S. 17:407.31 et seq.;
2. violation of any rules and regulations in this bulletin;
3. failure to meet any minimum standards in this bulletin;
4. failure to take steps or actions reasonably necessary to ensure the health and safety and well-being of children in care;
5. failure to timely comply with a corrective action plan approved by the Licensing Division;
6. failure to obtain approval of any agency whose approval is required for licensure;
7. failure to report a known or suspected incident of abuse or neglect to child welfare authorities;
8. denial of center access to Licensing Division staff or failure or refusal to cooperate with Licensing Division staff in the performance of official duties;
9. history of non-compliance with licensing laws, rules, or minimum standards;
10. nonpayment of licensure fee;
11. failure to submit application for renewal prior to the expiration of the license;
12. if the owner or director is not reputable;
13. if the owner, director, or a staff member is unsuited for the care of children in the center;
14. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, or physical or sexual abuse or neglect, if the owner is responsible or if the employee who is responsible remains in the employment of the center;
15. any act of fraud, such as the submission of false or altered documents or information; and
16. the center is closed and there are no plans for immediate reopening and no means of verifying compliance with licensing laws, regulations and minimum standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.44.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1303. Notice of Denial, Revocation or Refusal to Renew

A. The Licensing Division shall provide written notice to a center of its reasons for the denial of an application for licensure or the revocation of or refusal to renew a license and of the right to appeal the decision to the Division of Administrative Law (DAL).

B. The denial, revocation or refusal to renew shall be effective on the last day for applying to appeal the action, if the action is not appealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.44.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1305. Posting of Notice of Revocation

A. The Licensing Division shall prominently post notice of a revocation action at each public entrance of the center within one business day of such action.

B. Such notice of revocation shall remain posted and visible to parents of children at the center throughout the pendency of any appeals of the revocation.

C. The center shall not permit the destruction or removal of a notice of revocation action and shall ensure that the notice continues to be visible to any person entering the center throughout the pendency of any appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.44.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1307. Appeal of Denial, Revocation or Refusal to Renew

A. A center has 30 calendar days to request an appeal of the denial of its application for licensure and 15 calendar days to request an appeal of the revocation of or the refusal to renew its license.

B. The Licensing Division must receive a written request for an appeal within 30 calendar days of the center's receipt of notice of the denial of its application and within 15 calendar days of the center's receipt of notice of revocation of or refusal to renew its license.

C. A center may continue to operate during the appeals process, as provided by the Administrative Procedure Act found at R.S. 49:95 et seq.

D. A request for an appeal submitted to the Licensing Division shall include:

1. a copy of the written reasons for denial, revocation or refusal to renew; and

2. written identification of specific areas of the decision believed to be erroneous and/or specific reasons the decision is believed to have been reached in error.

E. The Licensing Division shall notify the Division of Administrative Law (DAL) within 10 calendar of receipt of a timely request for an appeal of the denial of an application or the revocation of or refusal to renew a license.

F. The DAL shall hold a hearing no later than 30 calendar days after receipt of such notice, with an administrative ruling provided to the center no later than 15 calendar days from the date of the hearing for revocation or refusal to renew a license, or within 30 calendar days from the date of a hearing for the denial of a license.

G. If the DAL affirms the decision of the Licensing Division, or if the appeal is dismissed, the center shall terminate operations immediately.

H. The Licensing Division shall have the right to seek judicial review of any final decision or order rendered by the DAL in any appeal hearing arising under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.45.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1309. Disqualification Period Following Revocation or Refusal to Renew

A. If a license is revoked or renewal is refused due to failure to comply with licensing laws, regulations or minimum standards, or if a license is surrendered to avoid such adverse action, a center shall not be qualified to submit a new application for licensure for a minimum disqualification period of 24 months.

B. The minimum disqualification period shall begin on the later of:

1. the effective date of revocation, refusal to renew, or surrender to avoid adverse action; or

2. the day after all appeal rights have been exhausted.

C. Any unlicensed operation during the disqualification period shall interrupt running of the 24-month prescriptive period until the Licensing Division has verification that the unlicensed operations have ceased.

D. Any pending application by the same center shall be treated as an application for a new center for purposes of this Section and may be denied and subject to the disqualification period.

E. If the owner of a center has multiple licensed early learning centers and the license of one center is revoked, renewal is refused, or the license is surrendered to avoid adverse action, a capacity increase may be denied at any of the other existing licensed centers for the minimum disqualification period.

F. If the owner of a center has multiple licensed early learning centers, and a license is revoked, renewal is refused, or the license is surrendered to avoid adverse action for one center due to the actions on the part of the owner or a director who is responsible for more than one center, the licenses at all locations may be reviewed for possible revocation or refusal to renew.

G. If an applicant has a history of non-compliance with licensing laws, regulations or minimum standards, including but not limited operating without a license, or has been denied one or more previous applications for licensure, the Licensing Division may refuse to accept a subsequent application from the applicant for the minimum disqualification period after the effective date of the most recent adverse action.

H. An application for a new license for a center whose license has been revoked or renewal has been refused, or whose license has been surrendered to avoid adverse action, may be denied if the applicant is an affiliate of the center.

1. *Affiliate* for purposes of this Section means:

a. each partner or member of a partnership or limited liability company;

b. each officer, director and stockholder of a corporation;

c. and with respect to a natural person:

i. that person and any individual related by blood, marriage or adoption within the third degree of kinship to that person;

ii. any partnership, together with any or all of its partners, in which that person is a partner; and

iii. any corporation in which that person is an officer, director or stockholder, or directly or indirectly holds a controlling interest;

d. with respect to any of the above, any mandatary, agent or representative, or any other natural or juridical

person acting at the direction or on behalf of the licensee or applicant; and

e. the director of any such early learning center.

I. If a license is revoked due solely to the disapproval from any agency whose approval is required for licensure, or due solely to the center being closed and with no immediate plans for re-opening within 30 calendar days and with no means for the Licensing Division to verify compliance with minimum standards for licensure, the disqualification period may be partially or totally waived at the discretion of the Licensing Division.

1. The Licensing Division may accept a subsequent application for a license that shall be reviewed by the Licensing Division prior to a decision being made to grant a license.

2. The Licensing Division reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

J. If an application for a license has been denied or a license revoked, renewal refused or the license surrendered to avoid adverse action, any owner, officer, member, manager, director or administrator of such licensee shall be prohibited from owning, managing, directing or operating another licensed center for a disqualification period of not less than 24 months from the date of the final disposition of the most recent adverse action.

1. The lapse of 24 months shall not automatically restore eligibility to a person disqualified under this Subsection.

2. The Licensing Division, at its sole discretion, may determine if a longer period of disqualification is warranted based upon the facts of each case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.44 and R.S. 17:407.45.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1311. Licensure Process Following Disqualification Period

A. Only centers and affiliates that have completed the 24-month disqualification period and/or other disqualification sanctions imposed by the Licensing Division, may apply for a new license in accordance with this bulletin.

B. Any application for a new license submitted after the minimum disqualification period shall be reviewed by the Licensing Division for any unresolved matters pertaining to the disqualification prior to making a determination to grant a license. The right to deny a subsequent application for licensure rests solely in the discretion of the Licensing Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407. 44 and R.S. 17:407.45.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 15. Minimum General Requirements and Standards

§1501. Operations

A. A center shall operate within the licensed capacity, age range, hours of operation and other specific services designated on its license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1503. General Liability Insurance Policy

A. A center shall maintain in force at all times current commercial liability insurance for the operation of the center to ensure medical coverage for children in the event of accident or injury.

B. A center is responsible for payment of medical expenses of a child injured while in the center's care.

C. Documentation of commercial liability insurance shall consist of the insurance policy or current binder that includes the name of the early learning center, physical address of the center, name of the insurance company, policy number, period of coverage and explanation of the coverage.

D. Parents shall not be required to waive the center's responsibility.

E. Parents may elect to use their own insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1505. Visitors

A. Any visitor, as defined in §103, to the center shall be accompanied by an adult staff person at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1507. Daily Attendance Records

A. Children. A daily attendance record for children shall be maintained that shall:

1. include the child's first and last name, arrival and departure times, and first and last name of person or entity to whom the child is released;

2. accurately reflect children on the center premises at any given time; and

3. be used to sign in and out if a child leaves and returns to the center during the day.

B. Staff and Owners. A daily attendance record for all staff members and owners shall be maintained that shall:

1. include the first and last name of the staff member or owner and arrival and departure times;

2. accurately reflect the staff members and owners on the center premises at any given time; and

3. be used to document staff members and owners who leave and return to the center during the day.

C. Independent Contractors. A daily attendance record for all extracurricular personnel, therapeutic professionals and other independent contractors, to include the first and last name, date of visit, arrival and departure times, and purpose of the visit.

D. Student Trainees. A daily attendance record for all student trainees to include the student's first and last name, school affiliation and date and arrival and departure times.

E. Visitors. A daily attendance record for all visitors to include the name, date of visit, arrival and departure times, and the purpose of the visit.

F. Daily attendance records shall be maintained for three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1509. Policies

A. An early learning center shall establish in writing and implement the following policies and minimum provisions of such policies:

1. child abuse and neglect policy:

a. as mandated reporters, all staff and owners shall report any suspected abuse or neglect of a child to the Louisiana Child Protection Statewide Hotline (855) 4LA-KIDS [(855) 452-5437];

b. an early learning center shall not delay the reporting of suspected abuse or neglect to the Child Protection Statewide Hotline in order to conduct an internal investigation to verify the abuse or neglect allegations; and

c. an early learning center shall not require staff to report suspected abuse or neglect to the center or management prior to reporting it to the Child Protection Statewide Hotline;

2. non-discrimination policy that prohibits discrimination on the basis of race, color, creed, sex, national origin, handicap, ancestry or whether a child is being breastfed;

3. admissions policy that includes admission criteria;

4. disclosure of information policy that provides notice to parents of the licensing authority of the Licensing Division and the availability of licensing surveys/inspections, regulations and information regarding early learning centers from the Department of Education's website;

5. complaint policy:

a. parents shall be advised of the licensing authority of the Licensing Division along with the current telephone number and email address. Parents shall also be advised that they may call or write the Licensing Division should they have significant, unresolved licensing complaints;

6. parental access policy:

a. parents shall be allowed to visit the center anytime during its regular hours of operation and when children are present;

7. parental involvement policy:

a. parents shall be offered a minimum of two opportunities for involvement each year, which may include but are not limited to, an open house, parent education session, parent and staff conference, family pot luck dinner, holiday party or parent or grandparent's day;

8. behavior management policy:

a. each center shall develop and implement a written behavior management policy describing the methods of behavior guidance and management that shall be used at the center;

b. the behavior management policy shall prohibit children from being subject to any of the following:

i. physical or corporal punishment which includes but is not limited to yelling, slapping, spanking, yanking, shaking, pinching, exposure to extreme temperatures or other measures producing physical pain, putting anything in the mouth of a child, requiring a child to exercise, or placing a child in an uncomfortable position.

ii. verbal abuse, which includes but is not limited to using offensive or profane language, telling a child to "shut up", or making derogatory remarks about children or family members of children in the presence of children;

iii. the threat of a prohibited action even if there is no intent to follow through with the threat;

iv. being disciplined by another child;

v. being bullied by another child;

vi. being deprived of food or beverages;

vii. being restrained by devices such as high chairs or feeding tables for disciplinary purposes; and

viii. having active play time withheld for disciplinary purposes, except timeout may be used during active play time for an infraction incurred during the playtime;

c. time out:

i. time out shall not be used for children under age two;

ii. a time out shall take place within sight of staff;

iii. the length of each time out shall be based on the age of the child and shall not exceed one minute per year of age;

iv. for children over age six, a time out may be extended beyond one minute per year of age, if a signed and dated statement, including a maximum time limit, from the parent granting such permission, is on file at the center;

9. electronic devices policy that provides that all activities involving electronic devices, including but not limited to television, movies, games, videos, computers and hand held electronic devices, shall adhere to the following limitations:

a. electronic device activities for children under age two are prohibited; and

b. time allowed for electronic device activities for children ages two and above shall not exceed two hours per day;

10. computer practices policy that requires computers that allow internet access by children to be equipped with monitoring or filtering software that limits access by children to inappropriate websites, e-mail, and instant messaging;

11. programs, movies and video games policy:

a. programs, movies, and video games with violent or adult content, including but not limited to soap operas, television news, and sports programs aimed at audiences other than children, shall not be permitted in the presence of children;

b. all television, video, DVD, or other programming shall be suitable for the youngest child present;

c. "PG" programming or its television equivalent shall not be shown to children under age five;

d. "PG" programming shall only be viewed by children age five and above and shall require written parental authorization;

e. any programming with a rating more restrictive than "PG" is prohibited;

f. all video games shall be suitable for the youngest child with access to the games:

i. "E10+" rated games shall be permitted for children ages 10 years and older;

ii. "T" and "M" rated games are prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1511. Procedures

A. An early learning center shall establish in writing and implement procedures for:

1. physical activity:

a. children under age two shall be provided time and space for age appropriate physical activity for a minimum of 60 minutes per day;

b. children age two and older shall be provided a minimum of 60 minutes of physical activity per day that includes a combination of both teacher led and free play;

2. sleep/rest:

a. infants shall be allowed to sleep according to their individual schedules;

b. children under age four shall have daily rest time of at least 75 minutes in programs operating more than 5 hours per day;

c. children ages four and older shall be offered the opportunity for quiet time;

3. receiving and releasing a child from the center;

4. biting, treatment of bites and notifications to the parents of the children involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407. 40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1513. Schedules

A. An early learning center shall establish in writing and post the following schedules:

1. schedule of days and hours of operation, including scheduled days and holidays when center is closed; and

2. daily schedule that includes times of planned activities, including early learning activities, allowing for flexibility and change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1515. Child Records and Cumulative Files

A. Cumulative File. A cumulative file shall be maintained on each child that shall include the following records:

1. an information form signed and dated by the parent and updated as changes occur, that contains:

a. name of child, date of birth, sex, date of admission;

b. name of parents and the home address of both child and parents;

c. phone numbers where parents may be reached while child is in care;

d. name and phone number of person to contact in an emergency if parents cannot be located promptly;

e. name and telephone number of child's physician, if applicable;

f. name and telephone number of the child's dentist, if applicable;

g. any special concerns, including but not limited to allergies, chronic illnesses, and any special needs of the child, if applicable; and

h. any special dietary needs, restrictions or food allergies or intolerances, if applicable. See Paragraph 4;

2. written authorization signed and dated by the parent to secure emergency medical treatment; and

3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parents, including any other early learning centers, transportation services, and any person or persons who may remove the child from the center:

a. the parent may further authorize additional individuals via a text message or email to the center in unplanned situations and follow it with a written authorization;

b. a child shall never be released to anyone unless authorized in writing by the parent;

c. any additions and deletions to the list of authorized individuals shall be signed and dated by the parent;

d. the center shall verify the identity of the authorized person prior to releasing the child;

4. special diets:

a. unless the program is officially on the Child and Adult Care Food Program (CACFP), a parent may request special diet adjustments (i.e. no milk on a particular day);

b. if a center is on the CACFP, a written statement from a health care provider is required when the child requires a special diet for medical reasons;

c. a written statement from the parent is required when the child requires a modified diet.

B. Consent to Release. The center shall obtain written consent from the parent prior to releasing any information, recordings, or photographs from which the child might be identified, except to authorized state and federal agencies. This one-time written consent shall be obtained from the parent and updated as changes occur.

C. Confidentiality. The center shall maintain the confidentiality and security of all records of children. Center staff is prohibited from disclosing or knowingly permitting the disclosure of any information concerning the child or the family of the child, either directly or indirectly, to any unauthorized person.

D. Retention of Records. Records of children shall be maintained by a center for a minimum of three years from the date of termination of the child's enrollment at the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 17. Minimum Staffing Requirements and Standards

§1701. Prohibitions

A. No person who has been convicted of, or pled guilty or nolo contendere to any crime included in R.S. 15:587.1(C) shall be hired by an early learning center as a volunteer, staff member, employee or independent contractor of any kind.

B. No individual whose name is recorded on the state central registry within DCFS as a perpetrator for a justified (valid) finding of abuse or neglect of a child shall be hired by a licensed early learning center as a volunteer or staff member unless the individual has a current finding from DCFS indicating that the individual does not pose a risk to children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1703. Criminal Background Checks for Volunteers, Staff, Visitors and Independent Contractors

A. Volunteers and Staff. An early learning center shall obtain documentation of a satisfactory fingerprint based criminal background check (CBC) for each volunteer, staff member, or employee of any kind, prior to the person being present at the center or performing services for the center, and the center shall have copies of said documentation on-site at all times and available for inspection upon request by the Licensing Division.

B. Visitors and Contractors. An early learning center shall obtain documentation of a satisfactory fingerprint based CBC for each visitor or independent contractor of any kind, prior to the person being present at the center or performing services for the center unless the visitor or independent contractor will be accompanied at all times while on the center premises by an adult, paid, staff member who is not being counted in child to staff ratios, and the center shall have copies of said documentation on-site at all times and available for inspection upon request by the Licensing Division.

1. Documentation of the paid, adult staff member not otherwise counted in child to staff ratios who accompanied a visitor or independent contractor at all times while the visitor or contractor was on the center premises shall include the date, arrival and departure time of the visitor or contractor, language stating that the visit or contractor was accompanied by the staff member at all times while on the premises, and the signature of both the contractor and the accompanying staff member.

C. Parents, Grandparents and Siblings

1. Parents of an enrolled child, or other persons authorized in writing by the parents to pick up their child, who are only bringing a child to or picking up a child from an early learning center are not required to have a CBC.

2. Parents, grandparents and siblings of an enrolled child who are attending a function at the center where center staff will be present and supervising all children are not required to have a CBC.

D. CBC from Bureau. An early learning center may request a CBC from the Louisiana Bureau of Criminal Identification and Information (bureau) for any applicant, volunteer or staff member or independent contractor by submitting a request to the bureau that shall be made on a form prepared by the bureau, be signed by a responsible officer or official of the center, and include a statement signed by the person about whom the request is being made giving permission for such information to be released and the person's fingerprints in a form acceptable to the bureau.

1. A CBC shall be dated no earlier than 30 calendar days of the individual's hire date at the center.

2. If staff leave the employ of the center for more than 30 calendar days, a new satisfactory CBC shall be obtained prior to the individual being rehired or present on the early learning center premises.

a. For CBC purposes, staff who are working at a center at the end of a school year, are off during the summer as part of the center's scheduled yearly calendar dates of operation, and return to work at the same center for the beginning of the school year immediately following the summer they are off, are not considered to have left the employ of the center during the intervening summer.

3. A CBC is satisfactory for purposes of this Bulletin if it shows no arrests for any crime included in R.S. 15:587.1(C), or if an arrest is shown on the CBC for any excludable offense, the CBC or documentation from the jurisdiction of arrest affirmatively shows that the charges were disposed of without a conviction. A plea of guilty or nolo contendere shall be deemed to be a conviction.

E. Certified Copy of Individual's CBC. If an applicant has previously obtained a certified copy of his/her CBC from the bureau, it shall be accepted for a period of one year from the date of issuance by the bureau. Prior to the one year expiration of the CBC, a new fingerprint based satisfactory CBC shall be obtained by the center in order for the individual to continue employment or providing services at the center. If a new CBC is not obtained prior to the one year expiration of the certified copy of the CBC, the individual is no longer allowed on the early learning center premises until a new satisfactory CBC is obtained.

F. CBC Affidavits/Annual Letters for Department of Education and Local School District Staff

1. First Year. Prior to being present and working with children at an early learning center, Department of Education and local school district staff for whom the department or the local school district, respectively, has previously obtained a CBC may submit to centers an original, completed, signed and notarized, affidavit (CBC affidavit) in lieu of providing a CBC.

a. The affidavit shall be on a form prescribed by the Licensing Division and shall be signed by the state or local superintendent, or his/her designee.

b. The CBC affidavit shall be acceptable for the school year indicated on the affidavit and shall expire on July 31 following the end of the indicated school year.

c. The center shall have a copy of the CBC affidavit on-site at all times and available for inspection upon request by the Licensing Division.

2. Subsequent Years. For all subsequent school years following the first year, department and local school district staff shall present either a new CBC affidavit or an original, completed and signed letter (annual CBC letter) from the state or local superintendent, or his/her designee, in a form prescribed by the Licensing Division. The center shall keep a copy of each annual CBC letter on file at the center. The annual CBC letter shall be acceptable for the school year indicated in the letter and shall expire on July 31 following the end of the indicated school year. An annual CBC letter is acceptable only if the following conditions are met:

a. the department or local school district staff person has remained employed by the department or the school district indicated in the original CBC affidavit on file at the center;

b. the center has maintained a copy of the original CBC affidavit on file; and

c. the annual CBC letter is presented on Department of Education or local school district letterhead, and is signed by the state or local superintendent, or his/her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1705. State Central Registry Disclosure Forms for Volunteers and Staff

A. A completed state central registry disclosure form or a current determination from the DCFS indicating that the individual does not pose a risk to children, shall be obtained by the center for all volunteers and staff prior to an individual being present in or providing services to the center and the center shall have a copies of such forms on-site at all times and available for inspection upon request by the Licensing Division.

B. Any volunteer or staff member of an early learning center shall report on the state central registry disclosure form prior to being on the premises of the center, and shall update the report annually, at any time upon request by the Licensing Division.

C. If a current staff member receives notice of a justified (valid) finding of child abuse and/or neglect against him, he shall complete an updated state central registry disclosure form noting the existence of the justified (valid) finding. This updated form shall be submitted to the Licensing Division within 24 hours or no later than the next business day, or upon being on the child care premises, whichever is sooner. The staff member will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation from DCFS or shall be terminated immediately.

1. If the staff person will no longer be employed at the center, the center shall immediately submit to the Licensing Division a signed, dated statement noting the individual's name and termination date.

2. Immediately upon receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment, the staff person with the justified (valid) finding, when in the presence of children shall be directly supervised by a paid staff (employee) of the center. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with a child. The center shall submit a written statement to Licensing Division acknowledging that the staff person with the justified finding will not be left alone and unsupervised with a child or children pending the disposition by DCFS that the staff person does not pose a risk to children. When the aforementioned conditions are met, the staff may be counted in child/staff ratio.

D. If DCFS finds the individual does pose a risk to children, the staff (employee/volunteer) shall be terminated immediately.

E. Any information received or knowledge acquired that a current or prospective volunteer or employee, has falsified a state central registry disclosure form shall be reported in writing to a Licensing Division as soon as possible, but no later than the close of business on the next business day.

F. Any state central registry disclosure form or finding by DCFS the a person poses no risk to children that is maintained in an early learning center file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and/or neglect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1707. Required Staff

A. Director or Director Designee. Each center shall have a qualified director or qualified director designee.

1. The director or director designee shall be an on-site, full-time staff person at the center during the daytime hours of operation (prior to 9 p.m.).

2. The director or director designee shall be responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met.

B. Staff-in-Charge. When the director or director designee is not on the premises due to a temporary absence or during nighttime care hours, there shall be an individual appointed as staff-in-charge.

1. The staff-in-charge shall be at least age 21.

2. The staff-in-charge shall have the authority to respond to emergencies, inspections, parental concerns, and have access to all required information.

C. Staff-in-Charge. When the director or director designee is not on the premises due to a temporary absence, or during nighttime care hours, there shall be an individual on-site appointed as the staff-in-charge.

1. The individual appointed as staff-in-charge shall be at least age 21.

2. The staff-in-charge shall have the authority to respond to emergencies, inspections, and parental concerns, and shall have access to all required information.

D. More than 42 Children in Care. When the number of children present at an early learning center exceeds 42, the duties of the director or director designee shall consist only of performing administrative duties or there shall be an individual present whose job duties consist solely of administrative duties and of ensuring that staff members working with children do not leave their classrooms to handle administrative duties.

E. Staff

1. Staff shall be age 18 or older.

2. A person age 17 may be included in the child to staff ratio if the person works under the direct supervision of an adult staff member.

3. In type I centers only, a person age 16 may be included in the child to staff ratios if the person works under the direct supervision of an adult staff member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1709. Director Qualifications

A. The director/director designee shall be at least 21 years of age.

B. The director/director designee shall have documentation of at least one of the following upon date of hire as director or director designee:

1. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education or elementary education or a related field, and one year of experience in a licensed early learning center or comparable setting, subject to approval by the Licensing Division;

2. an associate of arts degree in child development or a closely related area, and one year of experience in a

licensed early learning center, or comparable setting, subject to approval by the Licensing Division;

3. a national administrator credential and one year experience in a licensed early learning center, or comparable setting, plus 6 credit hours in child care, child development or early childhood or 90 clock hours of training in child care, child development or early childhood, subject to approval by the Licensing Division;

4. a child development associate credential (CDA) and one year of experience in a licensed early learning center, or comparable setting, subject to approval by the Licensing Division;

5. a diploma from a post-secondary technical early childhood education training program approved by the Board of Regents or correspondence course approved by the Licensing Division and one year of experience in a licensed early learning center, or comparable setting, subject to approval by the Licensing Division; or

6. three years of experience as a director or staff in a licensed early learning center, or comparable setting, subject to approval by the Licensing Division; plus six credit hours in child care, child development or early childhood education, or 90 clock hours of training approved by the Licensing Division. Up to 3 credit hours or 45 clock hours may be in management/administration education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1) and (3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1711. Child to Staff Minimum Ratios

A. Child to staff ratios are established to ensure the safety of all children.

B. Minimum child to staff ratios shall be met at all times.

1. There shall be a minimum of two staff members present at an early learning center when more than one child is present.

2. Only those staff members directly providing care, supervision or guidance to children shall be counted in the child to staff ratios.

C. The Licensing Division form noting required child to staff ratios shall be posted in each room included in the center's licensed capacity.

D. Minimum Child to Staff Ratios for Type II and Type III Centers

Ages of Children	Ratio
Infants under 1 year	5:1
1 year	7:1
2 years	11:1
3 years	13:1
4 years	15:1
5 years	19:1
6 years and up	23:1

E. Future Minimum Child to Staff Ratios for Two-Year-Olds in Type II and Type III Centers. If the Louisiana Child Care Assistance Program subsidy rate reaches the 75 percentile of the 2012 Louisiana market rate survey rate for weekday care for toddlers by December 1, 2015, the child to staff ratios for two-year-olds shall decrease to 10:1 as of July 1, 2016.

F. Minimum Child to Staff Ratios for Type I Centers

Ages of Children	Ratio
Infants under 1 year	6:1
1 year	8:1
2 years	12:1
3 years	14:1
4 years	16:1
5 years	20:1
6 years and up	25:1

G. Mixed Age Groups—Minimum Child to Staff Ratios

1. An average of the child to staff ratios may be applied to mixed age groups of children ages two, three, four and five.

2. Child to staff ratios for children under age two are excluded from averaging.

3. When a mixed age group includes children younger than age two, the age of the youngest child determines the child to staff ratio for the group.

4. An average may be applied to a mixed age group consisting only of children ages five and older.

H. Rest Time—Minimum Child to Staff Ratios

1. Sufficient staffing needed to satisfy child to staff ratios shall be present on the premises during rest time and available to assist as needed.

2. Children ages one and older may be grouped together at rest time with one staff member in each room supervising the resting children. If two rooms share a common doorway, one staff member may supervise the resting children in both rooms.

3. If the view of the staff supervising the children is obstructed by an object such as a low shelving unit, children shall be checked by sight by staff circulating among the resting children.

I. Walking To and From School. Minimum child to staff ratios shall be met when walking children to and from school.

J. Field Trips—Minimum Child to Staff Ratios

1. Minimum child to staff ratios, plus one additional adult, shall be met for all field trips.

2. An adult staff member from the center shall be present with each group of children.

3. At no time shall a child or group of children be left alone without an adult staff member present unless the child is supervised by the parent of the child or designated representative authorized in writing by the parent.

K. Non-vehicular Excursions—Minimum Child to Staff Ratios

1. Minimum child to staff ratio, plus one additional adult, shall be met for all non-vehicular excursions.

2. An adult staff member from the center shall be present with each group of children.

3. At no time shall a child or group of children be left alone without an adult staff member present unless the child is supervised by the child's parent or designated representative authorized in writing by the parent on the non-vehicular excursions.

L. Water Activities—Minimum Child to Staff Ratios

1. A minimum of two staff shall be present when children are engaged in water activities.

2. The following minimum child to staff ratios apply when children are engaged in water activities, excluding water play activities, unless the children are participating in swimming lessons with a certified water safety instructor.

Ages of Children	Ratio
Three years	20:2
Four years	25:2
Five years and up	30:2

3. The age of the youngest child determines the child to staff ratio when children in a group are of mixed ages.

M. Special Needs Children—Minimum Child to Staff Ratios. When the nature of a child with special health care needs or the number of children with special health care needs warrants added care, the center shall add sufficient staff as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1713. Supervision

A. Children shall be supervised at all times in the center, on the playground, on field trips, on non-vehicular excursions, and during all water activities and water play activities.

B. Children shall not be left alone in any room, (except the restroom as indicated in Subsection G), outdoors, or in vehicles, even momentarily, without staff present.

C. A staff person shall be assigned to supervise specific children whose names and whereabouts that staff person shall know and with whom the staff person shall be physically present. Staff shall be able to state how many children are in their care at all times.

D. Individuals who do not serve a purpose related to the care of children or who hinder supervision of children in care shall not be present in the center.

E. While supervising a group of children, staff shall devote their time to supervising the children, meeting the needs of the children, and participating with them in their activities.

F. Staff duties that include cooking, housekeeping or administrative functions shall not interfere with the supervision of children.

G. Restrooms

1. Children who are developmentally able may be permitted to go to the restroom independently at an early learning center, provided that:

a. a staff member is in proximity to the children to ensure immediate intervention to safeguard a child from harm while in the restroom; and

b. individuals who are not staff members may not enter the center restroom area while in use by any child other than their own child.

2. A child age four and older may be permitted to go and return from the restroom without staff.

H. Play Yard. When children are at the play yard, the supervising staff member must be able to summon another adult staff member without leaving the children unsupervised.

I. Water Activities. Staff shall actively supervise children engaged in water activities and shall be able to see all parts of the swimming pool, including the bottom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1715. Staff Records and Personnel Files

A. Staff Members. Personnel files for each staff member shall be maintained at the center and shall include the following:

1. an application or staff information form containing the following information: name, date of birth, home address and phone number, training, work experience, educational background and hire date;

2. copy of a state or federal government issued photo identification;

3. upon termination or resignation of employment, the last date of employment and reason for leaving;

4. documentation of a fingerprint based satisfactory criminal background check; and

5. documentation of a current, completed state central registry disclosure form indicating no justified (valid) finding of abuse or neglect by the DCFS, or a current determination from the DCFS indicating that the individual does not pose a risk to children.

B. Records Retention. Staff records and personnel files shall be maintained for a minimum of three years from the date of termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1717. Records for Independent Contractors and Student Trainees

A. Independent Contractors. The following information shall be maintained for all independent contractors, including but not limited to therapeutic professionals, extracurricular personnel, contracted transportation drivers, Department of Education, Office of Early Childhood staff and local school district staff:

1. an information form that includes the person's name, address and phone number;

2. a list of duties performed while present at the center; and

3. documentation of a fingerprint based satisfactory criminal background check dated prior to the individual being present at the center or documentation of the paid, adult staff member not otherwise counted in child to staff ratios that accompanied the contractor at all times while the contractor was on the center premises, to include the date, contractor arrival and departure time, language stating that the contractor was accompanied by the staff member at all times while on the premises, and the signature of both the contractor and the accompanying staff member.

B. Student Trainees. The following information shall be maintained for all student trainees:

1. an application or information form with the student's name, date of birth, address and telephone number, name of the educational center and course instructor, and a job description that includes duties to be performed.

C. Records Retention. Records for independent contractors and student trainees shall be maintained for a minimum of three years from the date the contractor or student was last present at the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1), R.S. 17:407:40, and R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1719. Orientation Training

A. Within seven calendar days of date of hire, and prior to assuming sole responsibility for any children, each staff member shall receive orientation to the policies and practices of the center that at a minimum shall include:

1. child abuse identification and reporting;
2. emergency preparation;
3. licensing regulations; and
4. safe sleep practices.

B. Within 30 calendar days of date of hire, each staff member shall receive orientation to the additional policies and practices of the center that at a minimum shall include:

1. child development;
2. child guidance;
3. learning activities;
4. health and safety;
5. shaken baby prevention; and
6. CPR and first aid, as applicable.

C. All staff members responsible for transporting children shall receive additional orientation training in the following areas prior to assuming their transportation duties:

1. transportation regulations, including the modeling of how to properly conduct a vehicle passenger check and demonstration by staff to director on how to conduct a vehicle passenger check;
2. proper use of child safety restraints required by state law;
3. proper loading, unloading, and tracking of children as required by state law;
4. location of first aid supplies; and
5. emergency procedures for the vehicle, including actions to be taken in the event of accidents or breakdowns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1) and (3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1721. Continuing Education

A. Early learning centers shall provide opportunities for continuing education of staff members. The center staff of type II and type III centers, excluding foster grandparents, shall obtain a minimum of 12 clock hours of training annually in the topics found in §1719.A and B conducted by trainers approved by the Licensing Division. The Licensing Division shall keep a registry of approved trainers. The center staff of type I centers, excluding foster grandparents, shall obtain a minimum of 3 clock hours of training annually in the topics found in §1719.A and B. Beginning July 1, 2015, type I center staff shall obtain a minimum of 6 clock hours of such training annually. Beginning July 1, 2016, type I center staff shall obtain a minimum of 9 clock hours of such training annually. Beginning July 1, 2017, type I center staff shall obtain a minimum of 12 clock hours of such training annually.

B. These hours are in addition to the 3 hours required for health and safety in the *Louisiana Sanitary Code*, found at LAC 51:XXI.301.A.9.

C. Copies of certificates of completion or attendance records shall be maintained at the center and available for inspection by the Licensing Division upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1) and (3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1723. CPR and First Aid Certifications

A. Infant and child CPR. Fifty percent of staff members on the premises of a center and accessible to children, or at least four staff on the premises and accessible to children, whichever is less, shall have current certification in infant and child CPR.

B. Adult CPR. Fifty percent of staff members on the premises of a center and accessible to children, or at least four staff on the premises and accessible to children, whichever is less, shall have current certification in adult CPR, except for type I centers, which shall have at least one staff member on the premises and accessible to children trained in adult CPR if there is a child eight years or older on the premises. Beginning on July 1, 2016, type I centers shall have 50 percent of staff members on the premises of a center and accessible to children or at least four staff on the premises and accessible to children, whichever is less, certified in adult CPR.

C. Pediatric First Aid. Fifty percent of staff members on the premises of a center and accessible to children, or at least four staff on the premises and accessible to children, whichever is less, shall have current certification in pediatric first aid. Beginning on July 1, 2016, this Subsection shall apply type I centers.

D. Certification. A copy of the certification for each such staff member shall be on-site at all times and available for inspection by the Licensing Division.

E. First Responder. Staff members who maintain current certification as a first responder are considered to have current certification in CPR and pediatric first Aid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1725. Medication Management Training

A. All staff members who administer medication shall have medication administration training.

B. Whether administering medication or not, each early learning center shall have at least two staff members trained in medication administration.

C. Such training shall be completed every two years with an approved child care health consultant.

D. A licensed practical nurse (LPN) or registered nurse (RN) with a valid nursing license shall be considered to have medication administration training.

E. Beginning on July 1, 2016, this Section shall apply to type I centers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 19. Minimum Health, Safety, and Environment Requirements and Standards

§1901. General Safety Requirements

A. Telephones and Emergency Numbers

1. A working phone capable of incoming and outgoing calls shall be readily available at the center at all times. Cellular phones are not acceptable for this purpose.

2. When a center has multiple buildings and a phone is not located in each building where children are present, the center shall establish and follow written procedures for securing emergency help. The written procedures shall be posted in each building.

3. Centers located in schools and churches shall have a phone within the licensed area.

4. Appropriate emergency numbers, including but not limited to numbers for the fire and police departments, nearby hospitals and medical centers, Louisiana Poison Control and Child Protective Services, and the physical address of the center, shall be prominently posted on or near each phone.

B. Physical Separation. An early learning center, except one located in a church or school, shall be physically separated from any other business or enterprise, thereby preventing unauthorized access to children in care.

C. Lighting. Areas used by children shall be lighted in such a way as to allow visual supervision of the children at all times.

D. End-of-Day Check. The entire center and play yard shall be checked after the last child departs to ensure that no child is left at the center and this check shall be documented. Documentation shall include date, time of visual check, and signature of the staff conducting the visual check.

E. Sex Offender Registry. An early learning center shall register with the Louisiana State Police sex offender registry at www.lsp.org to receive updates when a sex offender moves within two miles of the center.

F. Centers shall not permit any individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to the center.

G. The owner or director of an early learning center shall immediately notify law enforcement personnel and the Licensing Division if they have knowledge that a registered sex offender is on the premises of the center. The verbal report shall be followed by a written report to the Licensing Division within 24 hours.

H. All equipment used by children shall be maintained in a clean and safe condition and in good repair.

I. Moveable equipment shall be secured and supported so that it shall not fall or tip over.

J. Microwave ovens, bottle warming devices and crock pots are prohibited in areas accessible to children.

K. Items that can be harmful to children, such as medications, poisons, cleaning supplies and chemicals, and equipment, tools, knives and other potentially dangerous utensils, shall kept in a locked cabinet or other secure place that ensures they are inaccessible to children.

L. Plastic bags, when not in use, regardless of purpose or use, shall be made inaccessible to children.

M. Construction, remodeling, and alterations of structures shall be done in such a manner so as to prevent hazards or unsafe conditions, such as fumes, dust and safety hazards.

N. Strings and cords, including but not limited to those found on equipment, window coverings, televisions and radios, shall be inaccessible to children under age four.

O. First aid supplies shall be kept at the center and shall be easily accessible to employees but not accessible to children.

P. The center shall prohibit the use of alcohol and tobacco and the use or possession of illegal substances, unauthorized potentially toxic substances, fireworks and firearms, and pellet and BB guns on the center premises and notice to this effect shall be posted.

Q. The personal belongings of center staff members shall be inaccessible to children.

R. The center shall post a copy of the current "The Safety Box" newsletter issued by the Louisiana Office of the Attorney General and shall immediately remove from the early learning premises any items listed as recalled.

S. Lawn cutting services shall not occur while children are on the playground or outside the early learning center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1903. Physical Environment

A. Exclusive Use of Space. Indoor and outdoor space shall be used exclusively by children in care and center staff during hours of operation.

1. Exceptions are allowed only for schools or churches regarding the shared use of kitchens, dining rooms, restrooms and outdoor space.

2. If a center is located in a school or church, the center shall have time designated for exclusive use of the outdoor play area.

B. Physical Separation. An early learning center, except one located in a church or school, shall be physically separated from any other business or enterprise, thereby preventing unauthorized access to children in care.

C. Indoor and outdoor areas shall be free of hazards.

D. Indoor Space

1. A minimum of 35 square feet of usable indoor space shall be available per child. The space shall not include toilet facilities, hallways, lofts, storage spaces, stairways, lockers, offices, storage or food preparation areas, rooms used exclusively for dining or sleeping, or rooms used exclusively for the care of ill children.

2. The maximum number of children in care at one time, whether on or off the premises, shall not exceed the capacity as specified on the current license, which shall be the lessor of the capacity determinations made by the Office of State Fire Marshall and the Office of Public Health.

3. Any room counted as play space shall be available for play for the duration of the hours of operation.

4. Indoor space shall include an area for dining, which may be in each classroom.

5. The number of children using a room shall be based on the 35 square feet per child requirement, except for dining, sleeping, and other non-routine activities such as film viewing and parties.

6. In rooms with cribs, there shall be adequate open floor play space available for crawling, walking, pulling up and playing that is free of routine care furniture.

7. An indoor area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

E. Outdoor Space

1. A minimum of 75 square feet of outdoor play space per child using the play space at any one time shall be available.

2. The minimum outdoor play space shall be available for at least one third of the licensed capacity.

3. Outdoor play space shall be available through a direct exit from the center into the outdoor play space or shall be attached to the center in a manner that ensures children are continuously protected by a permanent fence or other permanent barrier while going to and from the center to the outdoor play space.

4. Children shall not enter or exit the center through the kitchen.

5. Outdoor play space shall be enclosed with a permanent fence or other permanent barrier in a manner that protects children from traffic hazards, prevents children from leaving the premises without proper supervision, and prevents contact with animals or unauthorized persons.

6. Crawlspaces and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1905. Nighttime Care for Children

A. All minimum standards for early learning centers apply to centers that care for children after 9 p.m. and prior to 5 a.m., and in which no individual child remains for more than 24 hours in one continuous day.

B. The following minimum standards also apply:

1. there shall be an employee on duty designated as staff-in-charge;

2. in addition to meeting all required staff to child ratios in §1711, there shall always be a minimum of two staff members present;

3. staff counted for purposes of meeting child to staff ratio shall be awake;

4. meals shall be served to children at ordinary meal times;

5. time for personal care routines and preparation for sleep, such as brushing teeth, washing hands and face, toileting and changing clothes shall be provided;

6. each child shall have a separate, age appropriate bed or cot with mat or mattress;

7. bunk beds are prohibited;

8. physical restraints shall not be used to confine children to bed; and

9. the center's entrance and drop off zones shall be well lighted during hours of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1907. Furnishings and Equipment

A. High Chairs

1. The high chair manufacturer's restraint device shall be used when children are sitting in a high chair.

2. Children who are either too small or too large to be restrained using the manufacturer's restraint device shall not be placed in a high chair.

B. Eating Practices

1. Developmentally appropriate seating shall be used.

2. Chairs and tables of suitable size shall be available for each child.

3. Feeding tables may be used at mealtimes, if children's feet are able to rest comfortably on a foot rest.

4. Feeding tables may also be used for occasional program activities that require a table surface for no longer than 30 minutes in one day in addition to mealtime minutes.

C. Sleeping Arrangements

1. Individual and appropriate sleeping arrangements shall be made available for each child age one and older.

2. Individual sleeping accommodations shall be assigned to a child on a permanent basis and labeled, unless the cots or mats are sanitized daily.

3. For programs serving children ages four and above only, individual and appropriate sleeping arrangements shall be made available for a child that requests a rest time.

D. Bed Coverings

1. A labeled sheet for covering the cot or mat and a labeled sheet or blanket for covering the child shall be provided by either the center or the parent, unless the cots or mats are covered with vinyl or another washable surface.

2. Sheets and coverings shall be changed immediately when soiled or wet.

3. Routine laundering shall occur at least weekly.

E. Cribs

1. A safety-approved crib shall be made available for each infant in accordance with the *Louisiana Sanitary Code* found at LAC 51:XXI.105.H.

2. Each crib shall meet U.S. Consumer Product Safety Commission requirements for full-size cribs as defined in 16 CFR 1219, or non-full-size cribs as defined in 16 CFR 1220.

3. Children are prohibited from sleeping in playpens or cribs with mesh sides.

4. Cribs shall be free of toys and other soft or loose bedding, including comforters, blankets, sheets, bumper pads, pillows, stuffed animals and wedges when the child is in the crib.

F. Prohibited items:

1. infant walkers;

2. toy chests, storage bins and other equipment with attached lids;

3. latex balloons for children under age three;

4. trampolines; and

5. culverts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1909. Safe Sleep Practices

A. Only one infant shall be placed in a crib.

B. All infants shall be placed on their backs for sleeping.

1. Written authorization from a physician is required for any other sleeping position.

2. Written notice of the specifically authorized sleeping position shall be posted on or near the crib.

C. Infants shall not be placed in positioning devices, unless the center has written authorization from a physician to use a positioning device.

D. Written authorization from a physician is required for a child to sleep in a car seat or other similar device and shall include the amount of time that the child is allowed to remain in said device.

E. "Back To Sleep" signs shall be posted in the room where infants sleep.

F. Infants who use pacifiers shall be offered their pacifier when they are placed to sleep, but it shall not be placed back in the mouth once the child is asleep.

G. Bibs shall not be worn by any child while asleep.

H. Nothing shall be placed over the head or face of an infant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1911. Care of Children

A. Diapers shall be changed when wet or soiled.

B. Children shall be changed and cleaned immediately following a toileting accident.

C. Staff shall respond promptly to a request from a child for toileting assistance.

D. While awake, children shall not remain in a crib, baby bed, swing, high chair, carrier or playpen for more than 30 consecutive minutes.

E. Daily Reports for Infants. Written reports that include the liquid intake, food intake, disposition, bowel movements and eating and sleeping patterns shall be given to the parents of infants on a daily basis. Reports shall be kept current throughout the day.

F. Children shall not be held by a staff member when the staff member is removing a bottle from a warming device.

G. Pacifiers attached to strings or ribbons shall not be placed around the neck or attached to the clothing of a child.

H. Hot liquids shall not be consumed in the presence of children.

I. Staff members shall adhere to proper techniques for lifting a child.

J. Staff members shall not lift a child by one or both arms.

K. Staff and children shall wash their hands using soap at least at the following times: upon arrival at the center, before preparing or serving meals, before giving medication, after playing in water used by more than one person, after toileting, after helping a child use a toilet or changing diapers, after wiping noses or cleaning wounds, after handling pets and other animals, after playing in sandboxes, before eating meals or snacks, upon coming in from outdoors, after cleaning or handling garbage and anytime hands become soiled with body fluids, such as urine, saliva, blood or nasal discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1913. Water Activities

A. The center shall obtain written parental authorization for a child to participate in any water activities or water play activities as those activities are defined in §103.

B. Children under age three shall not engage in water activities due to the risk of contamination and disease.

C. The use of saunas, spas or hot tubs is prohibited.

D. Swimming, wading and boating is prohibited in lakes, ponds and other similar bodies of water.

E. The center shall have written procedures describing the method staff shall use to account for children and ensure their safety while engaged in water activities.

F. When children use a pool or other body of water with a depth of more than 2 feet, a certified lifeguard shall be present and supervising the children and may be counted in the child to staff ratio.

1. For on-site water activities, the center shall have documentation of the current certification of the lifeguard.

2. For off-site water activities, the center shall have documentation of the current certification of the lifeguard, whether the lifeguard is furnished by the center or the off-site water location.

G. A center shall have at least two staff members who are responsible for supervising children in swimming or wading pools or in other water activities, whether on-site or off-site, who are certified in infant, child, and adult CPR and pediatric first aid and shall maintain documentation of such certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1915. Health Services

A. Observation. Upon arrival at the center, the physical condition of each child shall be observed for possible signs of illness, infections, bruises or injuries, and when something is observed, it shall be documented and such documentation shall include an explanation from the parent or child.

B. Reporting. Incidents, injuries, accidents, illnesses, and unusual behavior shall be documented and reported to the parent no later than when the child is released to the parent or authorized representative on the day of the occurrence.

C. Immediate Notification. The parent shall be immediately notified in the following circumstances:

1. blood not contained in an adhesive strip;
2. head or neck or eye injury;
3. human bite that breaks the skin;
4. animal bite;
5. impaled object;
6. broken or dislodged teeth;
7. allergic reaction skin changes (e.g. rash, spots, swelling, etc.);
8. unusual breathing;
9. symptoms of dehydration;
10. temperature reading over 101° oral, 102° rectal, or 100° axillary; or
11. injury or illness requiring professional medical attention.

D. The center shall not delay seeking care while attempting to contact a parent if emergency medical attention is required.

E. Information regarding the medical condition of a child may be posted in public view if the center obtains a signed and dated statement from the parent granting such permission.

F. Influenza Information. Centers shall provide each parent information concerning the influenza immunization by November first of each year. The Licensing Division shall provide information about influenza annually to each licensed center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1917. Medication Administration

A. Written Authorization. No medication or special medical procedure shall be administered to a child unless authorized in writing by the parent. Such authorization shall include:

1. name of child;
2. drug name and strength;
3. date(s) to be administered;
4. directions for use, including the route (oral, topical), dosage, frequency, time and schedule and special instructions, if any. It is not acceptable to note "as indicated on bottle"; and
5. signature of parent and date of signature.

B. Required Container/Packaging

1. For prescription medication to be administered at the center, the center shall maintain the original pharmacy container with the complete pharmacy label.
2. For non-prescription medication to be administered, the center shall maintain the original bottle packing for the medicine or a printed document from the manufacturer's website, which shall include the drug name and strength and clear directions for use.

C. All medication shall be sent to the center in its original container, shall not have an expired date, and shall be clearly labeled with the name of the child to ensure that medication is for individual use only.

D. If a non-prescription medication label reads "consult a physician," the early learning center shall also maintain a written authorization from a licensed health care provider for the child to take the medicine.

E. Aerosol. All aerosol medications shall be delivered to the center in pre-measured dosages.

F. Topical. The center shall not apply topical ointments, sprays or creams without a written authorization signed and dated by the parent.

G. Self-Administration. Children shall not administer their own medications without written authorization from the parent and such children shall administer medication in the presence of a staff person.

H. Records. Medication administration records shall be maintained for all children regardless of who administers the medication. Records shall include the following:

1. name of the child and medication name and dosage administered;
2. date and time medication administered;
3. documentation of telephone contact with parent prior to giving "as needed" medication;
4. signature of person administering medication or witnessing the child administering own medication;
5. signature of person completing the form; and
6. when a parent administers medication to his/her own child on center premises, the medication administration record shall be documented by either the parent or a staff member.

I. Authorization for "as needed" prescription and non-prescription medication shall be updated as necessary or at least every six months by the parent, and shall include circumstances for administering "as needed" medication and any applicable special instructions.

J. Medical Procedures. Children that require medical procedures such as tube feeding shall have specific instructions from a health care provider as part of the overall care plan for the child.

1. Administration of feedings or medications through a tube-feeding apparatus shall be performed by a staff member trained and authorized by the parent or individual designated by the parent.
2. Parental authorization and training shall be documented and shall include the name of child, date of training, name of staff trained, signature of staff trained, and signature of parent.
3. Documentation of feedings and medications administered shall include the name of child, date, time, what was administered, and signature of administering staff member.

K. Emergency Medications

1. Children who require emergency medications, such as an EpiPen or Benadryl, shall have a written plan of action that shall be updated as changes occur or at least every six months, and shall include:
   a. method of administration;
   b. symptoms that indicate the need for the medication;
   c. actions to take once symptoms occur;
   d. description of how to use the medication; and
   e. signature of parent and date of signature.
2. Medication administration records for emergency medication shall be maintained and include the following:
   a. symptoms that indicated the need for the medication;
   b. actions taken once symptoms occurred;
   c. description of how medication was administered;
   d. signature of administering staff member; and
   e. phone contact with the parent after administering emergency medication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1919. Food Service and Nutrition

A. All meals and snacks provided by the center, and their preparation, service and storage, shall meet the requirements for meals of the U.S. Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) and 7 CFR 226.20 and the *Louisiana Sanitary Code*, Title 51, Part XXIII, found at LAC 51:XXXIII. For the current CACFP

meal patterns, contact the Louisiana Department of Education, Division of Nutrition Support.

B. The weekly menu shall:

1. be planned for each day of the week and list the specific food items served;

2. be prominently posted by the first day of each week and remain posted throughout the week; and

3. have substitutions or additions posted on or near the menu.

C. Information regarding food allergies and special diets of children shall be posted in the food preparation area with special care taken to ensure that individual names of children are not in public view. If a parent chooses to allow the center to post the child's name and allergy information in public view, the center shall obtain a signed and dated authorization from the parent.

D. A minimum of a breakfast or morning snack, lunch, and afternoon snack shall be served to children, and meals and snacks shall be served not more than three hours apart.

1. Centers who do not serve breakfast shall have nutritious food available for children who arrive in the morning without having eaten breakfast.

2. Children under age four shall not have foods that are implicated in choking incidents. Examples of these foods include, but are not limited to: whole hot dogs, hot dogs sliced in rounds, raw carrot rounds, whole grapes, hard candy, nuts, seeds, raw peas, hard pretzels, chips, peanuts, popcorn, marshmallows, spoonsful of peanut butter, and chunks of meat larger than what can be swallowed whole.

3. Children shall be allowed a reasonable time to eat each meal and snack. Children shall not be forced to finish all their food.

4. Food shall be given to children on individual plates, napkins, paper towels or in cups, as appropriate.

5. Drinking water shall be readily available indoors and outdoors to children at all times. Water shall be given to infants only with written instructions from parents or a physician.

E. Parents shall be allowed to provide breast milk.

F. Centers may allow parents to bring food into the center.

G. Parents of all children in a class with a child with allergies shall be advised to avoid any known allergies in class treats or food brought into the center.

H. Infants that cannot hold a bottle shall be held while being bottle-fed. A child shall not be placed lying down on a mat or otherwise with a bottle, sippy cup, etc. A bottle shall not be propped at any time.

I. Microwave ovens shall not be used for warming bottles or infant food.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(4).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§1921. Emergency Preparedness and Evacuation Planning

A. Emergency and Evacuation Plan. The director shall consult with appropriate state and local authorities and shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of emergencies that at a minimum shall:

1. address any potential disaster related to the area in which the center is located;

2. include procedures for sheltering in place, lockdown and evacuation to a pre-determined site for potential threats to the safety, health and well-being of children in care;

3. include specific procedures for handling infants through two year olds;

4. include specific procedures for handling children with special needs, including the evacuation and transportation of children in wheelchairs;

5. include a system to account for all children;

6. include a system, and a back-up system, for contacting parents and authorized third party release caretakers;

7. include a system to reunite children and parents following an emergency;

8. include procedures for providing information about the emergency plan to parents at the time of enrollment and when changes occur;

9. be reviewed annually for accuracy and updated as changes occur; and

10. be reviewed with all staff at least once per year.

B. Individualized Emergency Plan. An individualized emergency plan shall be in place for each child with special needs and shall include medical contact information and additional supplies and equipment as needed.

C. Evacuation Pack. The center shall have an evacuation pack, the location of which is known to all staff, that at a minimum shall contain:

1. a list of area emergency phone numbers;

2. a list of emergency contact information and emergency medical authorization for all enrolled children;

3. an emergency pick up form;

4. first aid supplies, hand sanitizer, wet wipes, and tissue;

5. diapers for children who are not toilet trained and plastic bags for diapers;

6. a battery powered flashlight and radio and batteries;

7. food for children under the age of 4, including infant food and formula; and

8. disposable cups and bottled water.

D. Records. A center shall maintain a copy of records, documents, and computer files necessary for its continued operation following an emergency in either a portable file or at an off-site location.

E. Fire Drills. Fires drills shall be conducted at least once per month at various times of the day necessary to include all children, in accordance with the *NFPA 101, 2012 Life Safety Code*, sections 17.71-17.13.3, and shall be documented.

F. Tornado Drills. Tornado drills shall be conducted at least once per month in the months of March, April, May, and June at various times of the day necessary to include all children and shall be documented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Chapter 21. Minimum Transportation Requirements and Standards

§2101. General Requirements (Center-Provided, Parent-Provided or Contract Transportation)

A. These general transportation rules apply to all transportation, whether for field trips or daily transportation.

1. Transportation arrangements shall conform to all state laws, as amended, including but not limited to those requiring the use of seat belts and child restraints.

2. Only one child shall be restrained in a single safety belt.

3. The number of persons in a vehicle shall not exceed the manufacturer's recommended capacity.

4. Children shall never be left unattended in a vehicle.

5. Each child shall enter and exit a vehicle from the curb side of the street or shall be escorted across the street.

6. Children shall not be transported more than 1 1/2 hours per trip on a routine basis.

7. Children shall not be transported to prevent the center from being over capacity.

8. Vehicles shall be maintained in good repair.

9. Each vehicle shall have evidence of a current safety inspection.

10. First aid supplies shall be located in each center vehicle or contracted vehicle. First aid supplies (at least one per trip) shall be available for each field trip when parents provide transportation.

11. Center emergency information shall be prominently posted in each vehicle and shall provide the name of the director and the name, phone number and address of the center.

12. The use or possession of alcohol or tobacco in any form, illegal substances, unauthorized toxic substances or firearms of any kind is prohibited in any vehicle used to transport children.

13. The center shall maintain a copy of a valid appropriate Louisiana or other state-issued driver's license for all individuals who drive vehicles used to transport children, whether said drivers are staff members or contracted drivers.

14. Centers shall maintain at all times current commercial liability insurance for the operation of center vehicles to ensure medical coverage for children in event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in the center's care. Documentation shall consist of the insurance policy or current binder that includes the name of the early learning center, the name of the insurance company, policy number, period of coverage and explanation of coverage. If transportation is provided by parents for field trips or transportation is provided by contract, whether daily of field trip, a copy of the current liability insurance shall be maintained on file at the center.

15. Centers using contract transportation shall maintain a copy of the written contract that includes an express provision stating that the contractor shall comply with all state laws and regulations, as amended, regarding motor vehicles, including but not limited to seat belts and child restraints.

16. Child Safety Alarm. In accordance with R.S. 32:295.3.1, a center may have a child safety alarm installed in any vehicle that has a seating capacity of six or more passengers in addition to the driver. This vehicle has to be owned or operated by the early learning center, its owner, operator, or employees and used to transport children to or from the early learning center. The child safety alarm is an ignition-based alarm system that voice prompts the driver to inspect the vehicle for children before exiting the vehicle and shall be installed by a person or business that is approved by the manufacturer of the child safety alarm. An owner or director of an early learning center who elects to have a child safety alarm installed in a vehicle owned or operated by the early learning center shall ensure that the child safety alarm is properly maintained and in good working order each time the vehicle is used for transporting children to or from an early learning center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§2103. Daily Transportation (Contract or Center Provided)

A. Written authorization shall be obtained from a parent to transport a child on a regular basis. Such authorization shall include the name of the child, the type of transportation (to and from school, to and from home) and the names of individuals, schools, or other entities to whom the child may be released.

B. A staff person shall be present when a child is delivered to the center.

C. When children are picked up or dropped off at the center by a public or private school bus, staff shall be present to safely escort children to and from the bus.

D. Vehicle Staff

1. When transporting children under age four, the driver and one staff person shall be in each contracted or center provided vehicle at all times.

2. When transporting children age four and older, the driver plus one staff member shall be in each contracted or center provided vehicle at all times, unless the vehicle has a communication device which allows the driver to contact emergency personnel, in which case only the driver is needed.

E. Master Transportation Log

1. A copy of the current master transportation log shall be maintained on file at the center and shall include the names of the children, the pickup and drop off locations, and the authorized persons to whom the children may be released. Documentation shall be maintained whether transportation is provided by the center or contracted.

2. Each driver or monitor, whether provided by the center or through a contractor, shall be provided a current master transportation log.

F. Passenger Log

1. A current passenger log for each trip shall be used to track children and staff during transportation.

2. The log shall be maintained on file at the center and a copy shall be provided to the driver or monitor.

3. The following shall be recorded in the passenger log:

a. date the transportation is provided;
b. name of the child;
c. name of driver and staff members;
d. pick up and drop off locations;
e. time child was placed on the vehicle;
f. time child was released and name of the person or entity to whom child was released; and
g. signature of staff person completing the log.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§2105. Field Trips

The center shall obtain and maintain a signed parental authorization for each field trip.

B. At least two staff, one of whom may be the driver, shall be in each vehicle, unless the vehicle has a communication device and the child to staff minimum ratio is met in the vehicle.

C. If transportation is provided by parents, a planned route shall be provided to each driver and a copy maintained in the center if any parent is transporting a child in addition to their own child.

D. Children shall be supervised during the boarding and exiting of vehicles by an adult who remains outside of the vehicle.

E. A written record for each field trip shall be maintained and shall include the following:

1. date, destination(s) and method of transportation;
2. names of all the children being transported in each vehicle;
3. names of the driver, staff members and other adults being transported in each vehicle;
4. names of other adults who joined the field trip at the destination(s) to assist with supervision of children; and
5. the presence of each child each time the children enter or exit the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§2107. Motor Vehicle Passenger Checks

A. A visual passenger check of a vehicle is required to ensure that no child is left in the vehicle.

1. A staff person shall physically walk through the vehicle and inspect all seat surfaces, under all seats, and in all enclosed spaces and recesses in the interior of the vehicle.
2. The staff member shall record the time of the visual passenger check and sign the log, indicating that no child was left on the vehicle.

B. For field trips, each vehicle shall have a visual passenger check and a face-to-name count conducted at all of the following times:

1. prior to leaving center for destination;
2. upon arrival at and prior to departure from each destination; and
3. upon return to center.

C. For daily transportation services, the vehicle shall have a visual passenger check made at the completion of each trip or route, prior to the staff member exiting the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

§2109. Non-Vehicular Excursions

A. Written parental authorization shall be obtained for all non-vehicular excursions. Authorization shall include the name of the child, type and location of the activity, date and signature of the parent, and shall be updated at least annually.

B. Centers shall maintain records of all non-vehicular excursion activities to include the date, time, list of children, staff, and other adults, and type of activity.

C. Children shall not be taken on any vehicular or non-vehicular excursion to prevent the center from being over capacity. Children on excursions shall be included when determining whether the center is within its licensed capacity.

D. See §1711.K for child to staff minimum ratios applicable to non-vehicular excursions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 137—Louisiana Early Learning Center Licensing Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Act 868 (Early Learning Center Act) of the 2014 Regular Legislative Session transfers licensing authority from the Department of Children and Family Services (DCFS) to the Louisiana Department of Education (LDE) effective October 1, 2014. The law requires BESE to establish statewide minimum standards for the health, safety and well-being of children in early learning centers, ensure maintenance of these standards, and regulate conditions in early learning centers through a program of licensing administered by the LDE. As required by law, the LDE has worked with various stakeholders including early learning center providers (child care, Head Start/Early Head Start, Nonpublic), the State Sanitarian, the Fire Marshal, the Department of Health and Hospitals, and the Department of Children and Family Services since August of 2013 to develop the proposed regulations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There may be indeterminable costs and/or economic benefits to child care centers as a result of changes to the licensing policies. Some changes may result in an increase in costs and some may result in a savings. It is not possible to predict the resulting cost or savings. It will depend on many factors such as the number of staff, the activities at the center, and past practices.

If the Louisiana Child Care Assistance Program subsidy rate reaches the 75th percentile of the 2012 Louisiana Market Rate Survey rate for weekday care for toddlers by December 1, 2015, the child to staff ratios for two-year-olds shall decrease to 10:1 as of July 1, 2016. If there is a reduction in child to staff ratios, there will likely be an increase in costs to parents of two year olds as providers will pass on the cost for the increase in staffing. However for those centers receiving funds from the Louisiana Child Care Assistance Program, funding increases for parents could be mitigated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1501#026

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28:CXV.2313 and 2323)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2313, Elementary Program of Studies; and §2323, TOPS Honors Course Standards. The revisions update policy and provide requirements for honors courses that will qualify for the TOPS five-point GPA as required by Act 733 of the 2014 Regular Session of the Legislature.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
Subchapter A. Standards and Curricula
§2313. Elementary Program of Studies

A. Elementary schools shall adhere to the curricular and time requirements established by the LDE and approved by BESE.

B. Schools and LEAs providing prekindergarten programs shall offer a curriculum that is developmentally appropriate and informal in nature with a balance of both teacher-directed and student-initiated activities.

NOTE: Refer to *Bulletin* 136—*The Louisiana Standards for Early Childhood Care and Education Programs Serving Children Birth-Five Years.*

B.1. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(26), R.S. 17:17.1, R.S. 17:24.8, R.S. 17:81, R.S. 17:154-154.1, and R.S. 17:261 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1289 (June 2005), amended LR 33:2353 (November 2007), LR 36:1225 (June 2010), LR 37:1135 (April 2011), LR 39:2215 (August 2013), LR 39:3259 (December 2013), LR 41:

§2323. TOPS Honors Course Standards

A. TOPS honors courses meeting the standards listed in this section shall qualify for the TOPS five-point GPA calculation beginning with students graduating in 2017-2018.

1. English

a. English III. Students shall complete an additional unit of instruction beyond the regular course. The unit of instruction shall include additional grade-level, complex texts and related writing and research tasks.

b. English IV. Students shall complete an additional unit of instruction beyond the regular course. The unit of instruction shall include additional grade-level, complex texts and related writing and research tasks.

2. Mathematics

a. Probability and Statistics. Students shall complete an additional unit of instruction beyond the regular course.

i. The unit of instruction shall exemplify the following shifts identified in the math standards:

(a). focus;

(b). coherence;

(c). rigor–conceptual understanding, procedural skill and fluency, and application.

ii. All standards marked with a "+" from the statistics and probability domain of the high school standards must be included in the course.

iii. Students must design and implement a research project requiring mathematical modeling.

b. Pre-Calculus. Students shall complete an additional unit of instruction beyond the regular course.

i. The unit of instruction shall exemplify the following shifts identified in the math standards:

(a). focus;

(b). coherence;

(c). rigor–conceptual understanding, procedural skill and fluency, and application.

ii. All standards marked with a "+" from the number and quantity, algebra, functions, and geometry domains of the high school standards must be included in the course.

iii. Students must design and implement a research project requiring mathematical modeling.

c. Calculus. Students shall complete an additional unit of instruction beyond the regular course. The unit of instruction shall reflect the shifts identified in the math standards.

i. The unit of instruction shall exemplify the following shifts identified in the math standards:

(a). focus;

(b). coherence;

(c). rigor–conceptual understanding, procedural skill and fluency, and application.

3. Science

a. Biology II. Students shall complete two additional labs beyond the regular course.

b. Chemistry I. Students shall complete two additional labs beyond the regular course.

c. Chemistry II. Students shall complete two additional labs beyond the regular course.

d. Physics. Students shall complete two additional labs beyond the regular course.

e. Environmental science students shall complete two additional labs beyond the regular course.

4. Social Studies

a. U.S. History. Students shall complete two additional research projects beyond the regular course resulting in a written or performance-based product (e.g. formal debate, delivery of a speech, etc.).

b. Government. Students shall complete two additional research projects beyond the regular course resulting in a written or performance-based product (e.g. formal debate, delivery of a speech, etc.).

c. World History. Students shall complete two additional research projects beyond the regular course resulting in a written or performance-based product (e.g. formal debate, delivery of a speech, etc.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policies will have no effect on costs or savings to state or local governmental units over the next three fiscal years. However, there is a potential but indeterminable impact to the TOPS program beginning in FY19 depending upon the extent to which students complete honors courses which could increase the number and/or value of TOPS awards.

The revisions update policy and provide requirements for honors courses that will qualify for the TOPS five-point GPA as required by Act 733 of the 2014 Regular Session of the Louisiana Legislature.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There could be an economic benefit beginning in FY19 for students who would qualify for TOPS awards or receive an increased TOPS award as a result of a higher gpa based on honors courses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1501#027

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel (LAC 28:CXXXI.Chapters 2 and 6)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §233, The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements); §235, The Master's Degree Program Alternative Path to Certification (Minimum Requirements); §237, Certification-Only Program Alternative Path to Certification; §243, PRAXIS Exams and Scores and Section 504 Students; §605, Requirements to add Early Childhood (Grades PK-3); §607, Requirements to add Elementary (Grades 1-5); and §630, Requirements to add Mild/Moderate (1-5), (4-8) and (6-12)—Mandatory 7/1/2010. The proposed revisions include two new Praxis elementary content exams (5001 and 5018). Praxis exams are regenerated on a five-year cycle or on an as-needed basis. The current elementary content exam will not be offered by the Educational Testing Service after August 31, 2015.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 2. Louisiana Educator Preparation Programs
Subchapter B. Alternate Teacher Preparation Programs
§233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements)

A. - B.4. …

5. pass the Praxis content-specific examinations:

a. candidates for grades PK-3, pass elementary education;

b. candidates for grades 1-5 (regular education and mild/moderate), pass elementary education;

c. - e. ...

6. meet other non-course requirements established by college or university.

C. - I.3. …

4. passed the Praxis specialty examination for the area(s) of certification:

NOTE: This test was required for admission.

a. grades PK-3—elementary education;

b. grades 1-5 (regular and special education)—elementary education;

I.4.c. - L. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1790 (October 2006), amended LR 34:1387 (July 2008), LR 35:1477 (August 2009), LR 36:2261, 2263 (October 2010), LR 37:549, 558 (February 2011), LR 37:3208 (November 2011), LR 39:1460 (June 2013), LR 40:276 (February 2014), LR 41:

§235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements)

A. - C.3. …

4. pass the Praxis content-specific subject area examination:

a. candidates for PK-3 (regular education)—elementary education;

b. candidates for grades 1-5 (regular education and mild/moderate)—elementary education;

c. - e. …

f. candidates for special education early interventionist birth to five years, significant disabilities 1-12, hearing impaired K-12, visual impairments/blind K-12—elementary education;

5. meet other non-course requirements established by the college/university.

D. Program Requirements

1. Knowledge of Learner and the Learning Environment (15 credit hours)

1.a. - 5.a. …

E. Certification Requirements. Colleges/universities will submit signed statements to the Louisiana Department of Education indicating that the student completing the master's degree program alternative certification path met the following requirements:

1. passed core academic skills for educators components of Praxis (as required for admission);

2. completed all coursework in the master's degree alternate certification program with a 2.50 or higher grade point average (GPA);

3. passed the specialty examination (Praxis) for the area of certification (this test was required for admission):

a. grades PK-3 (regular education)—elementary education;

b. grades 1-5 (regular education and mild/moderate)—elementary education;

c. - e. …

f. special education early interventionist (birth to five years), significant disabilities 1-12, hearing impaired K-12, and visual impairments/blind K-12—elementary education specialty examination;

4. - 5.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1792 (October 2006), amended LR 35:1480 (August 2009), LR 36:2262, 2263 (October 2010), LR 37:549 (February 2011), LR 37:3209 (November 2011), LR 39:1460 (June 2013), LR 40:276 (February 2014), LR 41:

§237. Certification-Only Program Alternative Path to Certification

A. - C.3.b. …

4. Testing requirements:

a. pass the Praxis core academic skills for educators. Candidates who already possess a graduate degree will be exempted from this requirement. An ACT composite score of 22 or a SAT combined verbal/critical reading and math score of 1030 may be used in lieu of Praxis core academic skills for educators exams;

b. pass the Praxis content-specific subject area examination:

i. candidates for PK-3 (regular education)—elementary education;

ii. candidates for grades 1-5—elementary education;

iii. candidates for grades 4-8—pass the middle school subject-specific examination for the content area(s) to be certified;

iv. candidates for grades 6-12—pass the secondary subject-specific examination for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

v. candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music—pass the subject-specific examination for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. Provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

vi. candidates for special education early interventionist birth to five years, significant disabilities 1-12, hearing impaired K-12, and visual impairments/blind K-12—elementary education.

D. - E.2.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1794 (October 2006), amended LR 35:1482 (August 2009), LR 36:2262, 2263 (October 2010), LR 37:550 (February 2011), LR 37:3210 (November 2011), LR 39:1461 (June 2013), LR 40:277 (February 2014), LR 41:

Subchapter D. Testing Required for Licensure Areas

§243. PRAXIS Exams and Scores

A. - A.2. …

* * *

B. Content and Pedagogy Requirements

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning and Teaching		
			PLT K-6 (#0622 or 5622)	PLT 5-9 (#0623 or 5623)	PLT 7-12 (#0624 or 5624)
Early Childhood PK-3	Elementary Content Knowledge (0014 or 5014) prior to 9/1/15	150	PLT: Early Childhood 0621 or 5621 (Score 157)		
Early Childhood PK-3	Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018) OR Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	163 157 157 155 159	PLT: Early Childhood 0621 or 5621 (Score 157)		
	Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	 157 157 155 159			
Grades 1-5	Elementary Content Knowledge (0014 or 5014) prior to 9/1/15	150	160	---	---
Grades 1-5	Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018) OR Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005) Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	163 157 157 155 159 157 157 155 159	160		
Grades 4-8 Mathematics	Middle School Mathematics (0069) Prior to 1/1/14 Middle School Mathematics (5169) Effective 1/1/14	148 165	---	160	---
Grades 4-8 Science	Middle School Science (0439) Prior to 6/8/14 Middle School Science (5440) Effective 6/8/14	150 150	---	160	---
Grades 4-8 Social Studies	Middle School Social Studies (0089 or 5089)	149	---	160	---
Grades 4-8 English/ Language Arts	Middle School English/Language Arts (0049 or 5049) Prior to 1/1/14 Middle School English (5047) Effective 1/1/14	160 164	---	160	---

C. - C.2. …

* * *

D. Special Education Areas

Area	Content Exam	Score	Pedagogy Requirement	Score
All Special Education Area(s)				
Early Interventionist	Elementary Content Knowledge prior to 9/1/15 (0014 or 5014) Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018) OR Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005) Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	150 163 157 157 155 159 157 157 155 159	Special Education: Core Knowledge and Applications (0354 or 5354) and Principles of Learning and Teaching: Early Childhood (0621 or 5621 Effective 1/1/12 Special Education: Early Childhood (0691) and Principles of Learning and Teaching: Early Childhood (0621 or 5621) Effective 1/1/14	145 157 159 157
Hearing Impaired	Elementary Content Knowledge prior to 9/1/15 (0014 or 5014) Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018) OR Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005) • Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	150 163 157 157 155 159 157 157 155 159	Special Education: Core Knowledge and Applications (0354 or 5354) and Education of Deaf and Hard of Hearing Students (0271) Effective 11/1/11 Special Education: Core Knowledge and Applications (0354 or 5354) and Special Education: Education of Deaf and Hard of Hearing Students (0272 or 5272) Effective 1/1/14	145 160 145 160
Mild to Moderate Disabilities	ALL Candidates must pass a content area exam appropriate to certification level 1-5, 4-8, 6-12 (e.g., Elementary, or core subject-specific exams for middle or secondary grades)		Special Education: Core Knowledge and Mild to Moderate Applications (0543 or 5543) and PLT specific to grade level (K-6, or 5-9 or 7-12).	153
Significant Disabilities	Elementary Content Knowledge prior to 9/1/15 (0014 or 5014) Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018) OR Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005) • Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	150 163 157 157 155 159 157 157 155 159	Special Education: Core Knowledge and Severe to Profound Applications (0545 or 5545)	153

Area	Content Exam	Score	Pedagogy Requirement	Score
Visual Impairments/ Blind	Elementary Content Knowledge prior to 9/1/15 (0014 or 5014)	150	Special Education: Core Content Knowledge and Applications (0354 or 5354) Effective 11/1/11	145
	Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018) OR Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	163 157 157 155 159	Special Education: Core Content Knowledge and Applications (0354 or 5354) and Special Education: Teaching Students with Visual Impairments (0282) Effective 1/1/14	145 163
	Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) • Reading/Language Arts(5002) • Mathematics (5003) • Social Studies (5004) • Science (5005)	 157 157 155 159		

E. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1833 (October 2006), amended LR 36:485 and 488 (March 2010), LR 36:2265 (October 2010), LR 37:551 (February 2011), repromulgated LR 37:556 (February 2011), amended LR 37:3210 (November 2011), LR 39:1461 (June 2013), LR 40:277 (February 2014), LR 40:1680 (September 2014), LR 41:

Chapter 6. Endorsements to Existing Certificates

Subchapter A. Regular Education Level and Area Endorsements

§605. Requirements to add Early Childhood (Grades PK-3)

A. - A.2. …

B. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary school certificate (e.g., 6-12, 7-12, 9-12), special education certificate (other than early interventionist), or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, music) must achieve the following:

1. passing score for Praxis—elementary education;

2. passing score for Praxis—principles of learning and teaching early childhood (0621 or 5621) or accumulate 12 credit hours of combined nursery school and kindergarten coursework.

C. Individuals holding a valid early interventionist certificate must achieve the following:

1. passing score for Praxis—elementary education;

2. - 3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 37:883 (March 2011), repromulgated LR 37:1561 (June 2011), amended LR 37:3215 (November 2011), LR 38:44 (January 2012), LR 39:1464 (June 2013), LR 41:

§607. Requirements to add Elementary (Grades 1-5)

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3) must achieve the following:

1. passing score for Praxis—elementary education;

2. passing score for Praxis—principles of learning and teaching K-6 exam; and

3. nine semester hours of reading or passing score for Praxis—teaching reading exam (0204 or 5204).

B. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), special education certificate, or all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1.a. passing score for Praxis—elementary education; or

b. accumulate:

i. 12 semester hours of mathematics;

ii. 12 semester hours of science;

iii. 12 semester hours of English language arts; and

iv. 12 semester hours of social studies;

2. passing score for Praxis principles of learning and teaching K-6 exam; and

3. 9 semester hours of reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 38:44 (January 2012), LR 39:1464 (June 2013), LR 41:

Subchapter B. Special Education Level and Area Endorsements

§630. Requirements to add Mild/Moderate (1-5), (4-8) and (6-12)—Mandatory 7/1/2010

A. - B.1.f. …

2. passing score for Praxis exams—special education: core knowledge and mild to moderate applications (0543 or 5543), principles of learning and teaching (PLT): K-6, and elementary exam.

C. - E.2.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:1485 (August 2009), amended LR 37:553 (February 2011), LR 39:1464 (June 2013), LR 41:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policies will have no effect on costs or savings to state or local governmental units.

The proposed revisions include two new Praxis Elementary Content exams (5001 and 5018). Praxis exams are regenerated on a five-year cycle or on an as-needed basis. The current Elementary Content exam will not be offered by the Educational Testing Service after August 31, 2015.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1501#023

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of Home Inspectors

Visually Observable Evidence of
Suspected Mold Growth (LAC 46:XL.303)

The Board of Home Inspectors proposes to amend LAC 46:XL.303 in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Louisiana Home Inspector Licensing Law, R.S. 37:1471 et seq. The text is being amended and adopted to provide a definition for required reporting in accordance with recently enacted R.S. 37:1478(A).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XL. Home Inspectors
Chapter 3. Standards of Practice
§303. Definitions

A. …

* * *

Visually Observable Evidence of Suspected Mold Growth—visually observable discoloration of the interior components within the climate controlled living space apparently occurring from moisture that may be indicative of mold or microbial growth which is visually observable, without employing moisture, environmental or other testing methods.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1689 (August 2004), LR 36:2861 (December 2010), LR 38:2532 (October 2012), LR 41:

Family Impact Statement

The proposed Rule amendment has no known impact on family formation, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested parties may submit written comments to Morgan Dampier, Chief Operating Officer, Louisiana State Board of Home Inspectors, 4664 Jamestown, Baton Rouge, LA 70898-4868, or by facsimile to (225) 248-1335. Comments will be accepted through the close of business February 10, 2015.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on February 23, 2015 at 9 a.m. at the office of the State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA.

Albert J. Nicaud
Board Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Visually Observable Evidence of Suspected Mold Growth

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs (savings) to state or local governmental units as the result of the proposed rule change other than those directly associated with publication. The purpose of the proposed rule change is to define terms of art to comply with LSA R.S. 37:1478A, as amended by Act 572 of 2014. These changes involve how inspectors are to report potential cases of mold.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will likely be no increase in costs to licensed home inspectors as a result of the proposed administrative rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule will have no effect on competition among home inspectors.

Albert Nicaud	Evan Brasseaux
Board Attorney	Staff Director
1501#016	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Office of State Procurement

Procurement (LAC 34:V.2101, 2518, and 2521)

Editor's Note: This Notice of Intent is being repromulgated to correct an error upon submission. The original Notice of Intent can be viewed in the November 20, 2014 edition of the *Louisiana Register* on pages 2346-2348.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Division of Administration, Office of State Procurement, proposes to amend Chapters 21 and 25 of LAC 34:V, Procurement.

The laws governing procurement by state executive branch agencies defines "written" or "in writing" as including "information that is electronically transmitted and stored." As currently written, the rules governing the review of professional, personal, consulting, and social service contracts require original contracts with original signatures to be submitted to the Office of State Procurement. The following amendments to LAC 34:V.2518 and LAC 34:V.2521.E.1 are necessary in order to allow for the review of electronically transmitted documents.

The amendment to LAC 34:V.2521.M is necessary to correct an inconsistency between the rule as now written and governing law (see R.S. 39:1595(B)(10)(a)).

The amendment to LAC 34:V.2101 is necessary to be consistent with the provisions of R.S. 39:1661.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part V. Louisiana Procurement Code
Chapter 21. Miscellaneous Provisions
§2101. Contract Provisions
[Formerly LAC 34:I.2101]

A. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the state's discretion only, and shall be at the mutual agreement of the state and the contractor.

B. Contract Clauses. Contracts may include clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering the following subjects:

1. the unilateral right of the state to order in writing changes in the work within the general scope of the contract in any one or more of the following:

a. drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the state in accordance therewith;.

b. method of shipment or packing; or

c. place of delivery;

d. security for contract performance;

e. insurance requirements including as appropriate but not limited to general liability, automobile coverage, workers' compensation, and errors and omissions;

f. beginning and ending dates of the contract;

g. maximum compensation to be paid the contractor;

2. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;

3. variations between estimated quantities of work in a contract and actual quantities;

4. manufacturers' design drawings shall be supplied in duplicate for all state buildings, to the appropriate state agency at the conclusion of the contract.

C. Additional Contract Clauses. Contracts shall include clauses providing for appropriate remedies and covering the following subjects:

1. liquidated damages as may be appropriate;

2. specified excuses for delay or nonperformance as may be appropriate;

3. termination of the contract for default; and

4. termination of the contract in whole or in part for the convenience of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:

Chapter 25. Procurement of Professional, Personal, Consulting, Social Services, and Energy Efficiency Contracts
Subchapter A. General Provisions
§2518. Submission of Contracts
[Formerly LAC 34:V.118]

A. At least one copy of said contract and attachments shall be submitted to the Office of State Procurement. The Office of State Procurement shall submit a list of all contracts for $25,000 or more to the Legislative Fiscal Office. Copies of such contracts shall be forwarded to the Legislative Fiscal Office upon request. The Office of State Procurement will not accept for review and approval any contract that is not accompanied by the necessary attachments and copies as required herein. (Attachments being submittal letters, R.S. 39:1497 certification, BA-22, etc.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:2562 (December 2014), LR 41:

§2521. Contractual Review Process
[Formerly LAC 34:V.121]

A. Contracts arriving in the Office of State Procurement will be date stamped and logged in. Contracts should be submitted prior to their effective dates and no contract shall be approved which has been submitted 60 days after its effective date unless written justification is provided by the using agency and approval granted by the state chief procurement officer or his designee. All submittals will be required to have a cover letter attached thereto in conformity with §195, Appendix D of this Part.

B. If a contract does not appear to be out of the ordinary and appears to have the necessary attachments and inclusions, it will be routed as appropriate to the Division of Administration budget analyst for the submitting agency. A BA-22, or its equivalent, shall be submitted with every contract submitted to the Office of State Procurement, which contains any expenditures or reduction in expenditures.

C. Contracts that are incomplete as to form may be returned to the submitting agency. If a contract is merely missing an attachment then the necessary attachment may be secured from the submitting agency.

D. Contracts Returned from Budget

1. Not Recommended for Approval. If a contract is not recommended for approval, the Office of State Procurement shall discuss the reason with the budget analyst. If the problem cannot be resolved, the contract shall be returned to the submitting agency with a letter explaining the problem.

2. Recommended for Approval. If a contract is recommended for approval the review process shall continue.

E. Legal and Content Review. There are a number of different types of contracts, and content requirements may vary a little. All contracts shall contain the following:

1. signatures of both the head of the using agency or his designee and the contractor.

E.2. - L. …

M. A performance evaluation for every personal, professional, consulting or social services contract shall be done by the using agency in accordance with R.S. 39:1500. This performance evaluation shall be retained by the using agency for all small purchase contracts approved under delegated authority. For all other contracts this performance evaluation shall be submitted to the Office of State Procurement within 60 days after the termination of the contract. An example evaluation form can be found in §195, Appendix F of this Part. Using agencies should use their own formats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39: 1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:182 (April 1981), amended LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1069 (November 1985), LR 13:87 (February 1987), LR 13:653 (November 1987), LR 15:81 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2562 (December 2014), amended LR 40:2545 (December 2014), LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

It is anticipated that the proposed action will have no significant impact on:

1. household income, assets, and financial security;
2. early childhood or educational development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to George Grazioso, Office of State Purchasing, P.O. Box 94095, Baton Rouge, LA 70804-9095. He is responsible for responding to inquiries regarding this proposed Rule. All comments must be received by February 9, 2015, by close of business.

Jan B. Cassidy
Assistant Commission

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Procurement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are anticipated to result in no significant cost or savings for either state or local governmental entities. The laws governing procurement by state executive branch agencies defines "written" or "in writing" as including "information that is electronically transmitted and stored." As currently written, the rules governing the review of professional personal, consulting, and social service contracts require original contracts with original signature to be submitted to the Office of State Procurement. The following amendments to LAC 34:V.118 and LAC 34:V.121(E)(1) are necessary in order to allow for the review of electronically transmitted documents. These modifications will likely result in non-quantifiable time savings for various state employees handling contracts and procurement in the various state agencies.

The amendment to LACV.121(m) is necessary to correct an inconsistency between the rule as now written and governing law (see, R.S. 39:1595(b)(10)(a)).

The amendment to LAC 34:V.2101(M) is necessary to correct an inconsistency between the rule as now written and governing law (see, R.S. 39:1595(B)(10)(a)).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementing the rule changes will have no effect on revenue collections of state or local governmental entities.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no specific costs to directly affected persons or non-governmental groups as a result of the proposed rule. However, there will likely be a non-quantifiable economic benefit to the state through the ability to accept for review electronically transmitted documents.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as a result of implementing this rule.

Jan B. Cassidy	Evan Brasseaux
Assistant Commissioner	Staff Director
1501#017	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Property Assistance Agency

Electronic Media Sanitization
(LAC 34:VII.307 and 509)

Under the authority of R.S. 39:332, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Property Assistance Agency proposes to adopt a Rule relative to sanitizing surplus electronic equipment to prevent the release of sensitive personal information. This proposed Rule also requires all electronic media assets be tagged and entered into the agency's official system of recordation regardless of original acquisition cost.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part VII. Property Control
Chapter 3. State Property Inventory
§307. Items of Property to be Inventoried

A. All items of moveable property having an "original" acquisition cost, when first purchased by the state of Louisiana, of $1000 or more, all gifts and other property having a fair market value of $1000 or more, and all weapons and electronic media assets, regardless of cost, with the exception of items specifically excluded in §307.E, must be placed on the statewide inventory system. The term "moveable" distinguishes this type of equipment from equipment attached as a permanent part of a building or structure. The term "property" distinguishes this type of equipment from "supplies" with supplies being consumable through normal use in no more than one year's time. All acquisitions of qualified items must be tagged with a uniform state of Louisiana identification tag approved by the Commissioner of Administration and all pertinent inventory information must be forwarded to the Louisiana Property Assistance Agency director or his designee within 60 calendar days after receipt of these items. In instances when equipment must be installed and/or tested before acceptance by the agency, the calendar days will begin upon official acceptance by the agency.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended 8:277 (June 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 15:832 (October 1989), LR 18:1256 (November 1992), LR 28:481 (March 2002), LR 41:

Chapter 5. State Property Disposition
§509. Disposal and Surplus of Electronic Equipment

A. Policy. Electronic media, as defined by Office of Technology Services IT-POL-1-04 Data Sanitization Policy, that are subject to surplus, transfer, disposal, or otherwise permanently leave the possession of a state agency or its agents, except for lawful purpose shall be sanitized in accordance with Office of Technology Services IT-STD-1-17 Data Sanitization—Standards and Requirements.

B. Scope. All entities under the authority of the Louisiana Property Assistance Agency, pursuant to the provisions of R.S. 39:321 et seq., or any political subdivision that desires to utilize LPAA services must comply with this policy.

C. Responsibilities

1. Agencies shall establish policies and procedures to ensure compliance with this policy.

2. Agencies shall attest that they have sanitized all electronic equipment in accordance with the Office of Technology Services Policy IT-POL-1-04 Data Sanitization Policy prior to requesting permission to surplus or dispose of the electronic equipment.

3. Attestation shall be evidenced in a manner prescribed by LPAA PPM 11, Data Sanitization.

D. Related Policies, Standards, Guidelines. The following policies can be viewed on the respective agencies' websites:

1. Office of Technology Services IT-POL-1-04 Data Sanitization Policy;

2. Office of Technology Services IT-STD-1-17 Data Sanitization—Standards and Requirements;

3. LPAA PPM No. 11, Data Sanitization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(C), R.S. 39:326, R.S. 39:330, R.S. 39:330.1-2 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule should have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual and community asset development as described in R.S. 49:973.

Small Business Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule should have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments to Steve Bice, Louisiana Property Assistance Agency, P.O. Box 94095, Baton Rouge, LA 70804-9095. He is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on February 12, 2015.

Steve Bice
Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Media Sanitization

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendments are not expected to produce additional costs or savings to the state. The proposed rule changes seek to amend the Property Control rules governing the disposal of electronic media. The changes strengthen existing data sanitization requirements and are designed to reduce the possibility for personal information to be contained in any asset subject to surplus, transfer, disposal, or otherwise permanently leave the possession of a state agency or its agents.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Since sanitization was previously required, there are no expected increases to costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Steve Bice	Evan Brasseaux
Director	Staff Director
1501#042	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Ambient Air Quality Standards—PM_{10}
(LAC 33:III.711)(AQ351ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.711 (Log #AQ351ft).

This Rule is identical to federal regulations found in 40 CFR 50, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule includes LAC 33:III.711,Tables 1, 1a and 2. The Rule updates the national ambient air quality standards (NAAQS) language for particulate matter (PM10). The Clean Air Act (CAA) directs EPA to propose and promulgate primary and secondary NAAQS. Louisiana is adopting the updated NAAQS language. This Rule is necessary to maintain equivalency with the federal regulations and/or standards which enable Louisiana to carry out its duty required by R.S. 30:2054, the provisions of the CAA and state implementation plan (SIP) to implement, maintain and enforce the NAAQS in each affected region within the state. The basis and rationale for this Rule are to update the NAAQS language to mirror federal regulations as it applies to Louisiana affected sources. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air
Chapter 7. Ambient Air Quality
§711. Tables 1, 1a, 2—Air Quality

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	**Maximum Permissible Concentration**	
PM_{10}	150 µg/m³	(Maximum 24-hour concentration not to be exceeded more than once per year averaged over a three-year period)
***		

1. - 2. …

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	**Maximum Permissible Concentration**	
PM_{10}	150 µg/m³	(Maximum 24-hour concentration not to be exceeded more than once per year averaged over a three-year period)
***		

1. - 2. …

C. Table 2. Ambient Air—Methods of Contaminant Measurement

Table 2. Ambient Air—Methods of Contaminant Measurement		
Air Contaminant	**Sampling Interval**	**Analytical Method**
PM_{10}	24 hours	Reference method based on appendix J to 40 CFR 50 and designated in accordance with 40 CFR 53, or an equivalent method designated in accordance with 40 CFR 53.
***		

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1602 (September 2006), LR 34:433 (March 2008), amended by the Office of the Secretary, Legal Division, LR 40:1690 (September 2014), LR 41:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ351ft. Such comments must be received no later than February 25, 2015, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ351ft. This regulation is available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on February 25, 2015, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

1501#015

NOTICE OF INTENT

Department of Health and Hospitals
Board of Embalmers and Funeral Directors

License, Internship and Inspection
(LAC 46:XXXVII.707, 901, 903, 907, 909, 1107 and 2001)

Editor's Note: This Notice of Intent is being repromulgated due to an error upon submission. The original Notice of Intent can be viewed in the December 20, 2014 edition of the *Louisiana Register* on pages 2656-2658.

The Board of Embalmers and Funeral Directors proposes to amend LAC 46:XXXVII.Chapters 7, 9 and 11 pursuant to the authority granted by R.S. 37:840 and in accordance with the provisions of the Administrative Procedures Act, R.S. 40:950 et seq. The board finds it necessary to revise, amend and/or add provisions of the rules, regulations, and procedures relative to providing useful guidance and information for the purpose of improving regulatory compliance and to enhance understanding of these changes.

Title 46

PROFESSIONAL AN OCCUPATIONAL STANDARDS

Part XXXVII. Embalmers and Funeral Directors

Chapter 7. License

§707. Licensure by Endorsement Requirements

A. Any person desiring a temporary license in Louisiana for an embalmer and funeral director or a funeral director license, shall before practicing, make application on forms furnished by the board. Said application shall be accompanied by a permit fee as established by the board, which is not refundable. If applicant meets all requirements, the secretary shall issue a temporary license. The board cannot, at its discretion, extend the temporary license period.

B.1. - C. Repealed.

D.1. The temporary license entitles the licensee to practice embalming and/or funeral directing in this state. However, it shall become null and void if the original license is revoked, suspended, or lapsed.

2. - 3. Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840 and R.S. 37:842.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended LR 11:688 (July 1985), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 30:2821 (December 2004), LR 41:

Chapter 9. Internship

§901. Requirements for an Embalmer and Funeral Director License

A. Any person desiring to engage in the practice of embalming and funeral directing in this state, except those holding a temporary license, shall serve as an intern within the state of Louisiana.

1. - 5. Repealed.

6. The employment of the intern at the funeral home may be verified by the board. Verification of employment may be made by presenting the quarterly returns submitted either to the Internal Revenue Service or the Louisiana Department of Revenue and Taxation, or, alternatively, some other official form used to verify employment which is acceptable to the board.

7. The board registered supervisor shall certify or verify the cases and the contact hours that the intern worked during the month.

8. Any internship shall be considered stale/null and void and unavailable for consideration after the passage of 10 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, promulgated LR 5:277 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 15:10 (January 1989), LR 16:769 (September 1990), amended LR 30:2823 (December 2004), LR 34:2400 (November 2008), LR 41:

§903. Requirements for a Funeral Director License

A. Any person desiring to engage in the profession of funeral directing in this state, except those holding a temporary license, shall serve as an intern within the state of Louisiana.

1. The employment of the intern at the funeral home may be verified by the board. Verification of employment may be made by presenting the quarterly returns submitted either to the Internal Revenue Service or the Louisiana Department of Revenue and Taxation, or, alternatively, some other official form used to verify employment which is acceptable to the board.

2. The board registered supervisor shall certify or verify the cases and the contact hours that the intern worked during the month.

3. Any internship shall be considered stale/null and void and unavailable for consideration after the passage of 10 years.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended March 1974, promulgated LR 5:278 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 15:10 (January 1989), LR 19:744 (June 1993), LR 30:2823 (December 2004), LR 34:2400 (November 2008), LR 41:

§907. Affidavits Required

A. When tenure of internship is completed, an affidavit by both the intern and the person under whose supervision he or she served, shall be filed not later than 15 days with the board. Said affidavit shall list the number of bodies embalmed and/or funerals assisted in and the number of contact hours served.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended March 1974, promulgated LR 5:278 (September 1979), repromulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 30:2824 (December 2004), LR 41:

§909. Notification to Licensed Person

A. The secretary of the board, upon notification by the applicant, will inform the licensed person responsible for the supervision and the training of the intern of the rules and regulations concerning the internship and that he or she will be responsible to the board for the application and enforcement of these rules and regulations.

B. Repealed.

C. Each intern is required to file a complete case report for each individual case handled during the internship which must be signed by the individual licensee who was supervisor of that case and must also file a monthly report providing the board with a summary of the cases worked during that period and the number of contact hours served which shall be signed by the licensee designated as the supervisor of the intern. The report is due on the tenth day of the month and delinquent on the fifteenth day. Delinquent reports may result in the loss of credit for that month.

1. It shall be a requirement and responsibility of the intern to make these reports monthly and to have them in the office of the secretary on the date specified. Failure to perform as specified in this rule will mean automatic loss of that monthly credit. Failure of the licensed supervisor to perform as agreed or to in any way falsify the records of the internship will cause a fine to be levied in accordance with the provisions of R.S. 37:850 for said violation.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, promulgated LR 5:278 (September 1979), amended LR 11:946 (October 1985), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 15:11 (January 1989), LR 30:2824 (December 2004), LR 41:

Chapter 11. Funeral Establishments

§1107. Inspection

A. - B. …

1. area for displaying funeral merchandise which may consist of but not be limited to full size caskets, cuts, photographs or electronic images;

a. a minimum of three adult caskets of a variety of styles and quality must be kept on premises, one of which must consist of the minimal adult casket on the establishment's casket price list;

2. …

a. floors, tile, cement, linoleum, or like composition, finished with a glaze surface or epoxy flooring.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended November 1972, February 1973, amended LR 4:295 (August 1973), LR 4:356 (September 1978), LR 5:278 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 20:191 (February 1994), LR 20:1380 (December 1994), LR 30:2825 (December 2004), LR 41:

Chapter 20. Fees

§2001. Fees

A. - A.11. …

12. A fee of $100 from each person applying for a temporary license within this state;

13. …

AUTHORITY NOTE: Adopted in accordance with R.S. 37:840 and 37:845.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 30:2828 (December 2004), amended LR 41:

Family Impact Statement

The proposed additions and/or changes to the rules of the board, Professional and Occupational Standards for Embalmers and Funeral Directors should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

This proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule does not impact or affect a provider. "Provider" means an organization that provides services for individuals with developmental disabilities as defined in HCR 170 of the 2014 Regular Session of the Legislature. In particular, the proposed Rule has no effect or impact on a provider in regard to:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the cost to the provider to provide the same level of service;

3. the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to Kim W. Michel, Executive Director, Louisiana State Board of Embalmers and Funeral Directors, 3500 North Causeway Blvd., Suite 1232, Metairie, LA 70002. Written comments must be submitted to and received by the board within 30 days of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Kim W. Michel
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: License, Internship and Inspection

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no estimated implementation cost or savings due to the proposed rule changes except for the publication of the proposed rules estimated at $450. In FY 15. The proposed rule changes codify legislative action per Act 264 of the 2014 Regular Session of the Louisiana Legislature, specifically with regard to licensure and internships of embalmers/funeral directors. The proposed rule changes additionally modify requirements regarding casket displays in funeral homes, allowing alternative to the previous minimum of six full sized caskets on display.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

To the degree that the expanded internship options under Act 264 of 2014 may result in additional applicants to the relevant embalmer/funeral director positions, the board may realize a modest, but indeterminable increase in revenues through licensure application.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The expansion of internship opportunities as detailed in Act 264 of 2014 may facilitate additional individuals seeking to enter into the profession of embalmer/funeral director. The proposed rule changes may enable funeral homes to limit costs associated with the previous requirements to display a minimum of six full-sized caskets, with new rule requiring only three caskets.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes are not expected to have a significant effect on competition and/or employment, but the expansion of internship opportunities as detailed in Act 264 may ease entry into the profession of embalmer/funeral director.

Kim W. Michel	Evan Brasseaux
Executive Director	Staff Director
1501#028	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Per Diem Rate Reduction
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the state fiscal year (SFY) 2012-13 nursing facility rate rebasing (*Louisiana Register*, Volume 39, Number 5).

For SFY 2013-14, state general funds were required to continue nursing facility rates at the rebased level. Because of the fiscal crisis facing the state, the state general funds were not available to sustain the increased rates. Consequently, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for non-state nursing facilities (*Louisiana Register*, Volume 39, Number 7). This proposed Rule is being promulgated to continues the provisions of the July 1, 2013 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination
[Formerly LAC 50:VII.1305]

A. - O. …

P. Effective for dates of service on or after July 1, 2013, the per diem rate paid to non-state nursing facilities, excluding the provider fee, shall be reduced by $18.90 of the rate in effect on June 30, 2013 until such time that the rate is rebased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:092 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:3097, (November 2013), LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may increase the total direct and indirect cost of the provider to provide the same level of service due to the decrease in payments. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the reduction in payments adversely impacts the provider's financial standing.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, February 26, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities, Per Diem Rate Reduction

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of $46,003,628 for FY 14-15, $47,246,578 for FY 15-16 and $48,663,975 for FY 16-17. It is anticipated that $432 ($216 SGF and $216 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.17 percent in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately $75,250,140 for FY 14-15, $77,645,248 for FY 15-16 and $79,974,605 for FY 16-17. It is anticipated that $216 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.17 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for non-state nursing facilities. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately $121,254,200 for FY 14-15, $124,891,826 for FY 15-16 and $128,638,580 for FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to nursing facilities. The reduction in payments may adversely impact the financial standing of nursing facilities and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1501#057	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Rehabilitation Clinics
Physical and Occupational Therapies
Reimbursement Rate Increase
(LAC 50:XI.301 and 303)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.301 and §303 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement for physical, occupational and speech therapies provided in rehabilitation clinics to recipients under the age of 21.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing rehabilitation clinics in order to terminate the coverage and Medicaid reimbursement of services rendered to recipients 21 years of age and older (*Louisiana Register*, Volume 39, Number 1). In compliance with a court order from the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the reimbursement methodology for rehabilitation clinics in order to increase the reimbursement rates for physical and occupational therapy services rendered to recipients under the age of 21 (*Louisiana Register*, Volume 40, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 13, 2014 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 1. Rehabilitation Clinics
Chapter 3. Reimbursement
§301. Reimbursement Methodology

A. The Medicaid Program provides reimbursement for physical therapy, occupational therapy and speech therapy rendered in rehabilitation clinics to recipients under the age of 21.

B. …

C. Effective for dates of service on or after February 13, 2014, reimbursement for physical and occupational therapy services shall be 85 percent of the 2013 Medicare published rate. There shall be no automatic enhanced rate adjustment for physical and occupational therapy services.

D. Speech/language therapy services shall continue to be reimbursed at the flat fee in place as of February 13, 2014 and in accordance with the Medicaid published fee schedule for speech/language therapy services provided to recipients under the age of 21 in rehabilitation clinics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services financing, LR 30:1021 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:1533 (August 2014), LR 41:

§303. Reimbursement (Ages 0 up to 3)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1034 (May 2004), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and may reduce the total direct and indirect cost to the provider to provide the same level of service and enhance the provider's ability to provide the same level of service since this proposed Rule increases the payment to providers for the same services they already render.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, February 26, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Rehabilitation Clinics
Physical and Occupational Therapies
Reimbursement Rate Increase

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of $72,300 for FY 14-15, $73,975 for FY 15-16 and $76,195 for FY 16-17. It is anticipated that $540 ($270 SGF and $270 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.17 percent in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $118,092 for FY 14-15, $121,572 for FY 15-16 and $125,219 for FY 16-17. It is anticipated that $270 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.17 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the February 13, 2014 Emergency Rule which amended the reimbursement methodology for rehabilitation clinics in order to increase the reimbursement rates for physical and occupational therapy services rendered to recipients under the age of 21. It is anticipated that implementation of this proposed rule will increase program expenditures in the Medicaid program for rehabilitation clinics by approximately $189,852 for FY 14-15, $195,547 for FY 15-16 and $201,414 for FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1501#058	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

School Based Health Centers
Rehabilitation Services
Reimbursement Rate Increase
(LAC 50:XV.9141)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.9141 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to allow for Medicaid coverage and reimbursement of mental health services provided to students by School Based Health Centers and to establish provisions for other Medicaid-covered services students already receive (*Louisiana Register*, Volume 34, Number 7).

In compliance with a court order from the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for school based health centers in order to increase the reimbursement rates for physical and occupational therapy services (*Louisiana Register*, Volume 40, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 13, 2014 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment
Chapter 91. School Based Health Centers
Subchapter E. Reimbursement
§9141. Reimbursement Methodology

A. - B.2.…

C. Effective for dates of service on or after February 13, 2014, reimbursement for physical and occupational therapy services shall be 85 percent of the 2013 Medicare published rate.

D. Speech/language therapy services shall continue to be reimbursed at the flat fee in place as of February 13, 2014 and in accordance with the Medicaid published fee schedule for speech/language therapy services provided in school based health centers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1420 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by increasing access to school based rehabilitation services.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by increasing access to school based rehabilitation services.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, February 26, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: School Based Health Centers Rehabilitation Services—Reimbursement Rate Increase

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of $72,167 for FY 14-15, $73,896 for FY 15-16 and $76,113 for FY 16-17. It is anticipated that $432 ($216 SGF and $216 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.17 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $117,911 for FY 14-15, $121,440 for FY 15-16 and $125,083 for FY 16-17. It is anticipated that $216 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.17 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the February 13, 2014 Emergency Rule which amended the provisions governing the reimbursement methodology for school based health centers in order to increase the reimbursement rates for physical and occupational therapy services. It is anticipated that implementation of this proposed rule will increase program expenditures for school based health centers by approximately $189,646 for FY 14-15, $195,336 for FY 15-16 and $201,196 for FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1501#059

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

State Children's Health Insurance Program
Coverage of Prenatal Care Services
(LAC 50:III.20301 and 20303)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:III.20301 and 20303 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule which adopted provisions to expand coverage to children under Title XXI of the Social Security Act by implementing a stand-alone State Children's Health Insurance Program (SCHIP) to provide coverage of prenatal care services to low-income, non-citizen women and to clarify the service limits and prior authorization criteria for SCHIP prenatal care services *(Louisiana Register,* Volume 35, Number 1).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the January 20, 2009 Rule in order to include Medicaid coverage for the unborn child(ren) of any pregnant woman with income between 138 percent and 214 percent of the federal poverty level (FPL) (*Louisiana Register*, Volume 40, Number 1). The department subsequently promulgated an Emergency Rule which amended the December 31, 2013 Emergency Rule in order to clarify these provisions (*Louisiana Register*, Volume 40, Number 4). This proposed Rule is being promulgated to continue the provisions of the April 20, 2014 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 11. State Children's Health Insurance Program
Chapter 203. Prenatal Care Services
§20301. General Provisions

A. …

B. Effective December 31, 2013, coverage of SCHIP prenatal care services shall be expanded to include any pregnant woman with income between 138 percent and 214 percent of the FPL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§20303. Eligibility Criteria

A. - B.1. …

C. Recipients must have family income at or below 214 percent of the FPL.

D. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by increasing recipient access to prenatal care services that will promote better health outcomes for babies.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by increasing access to prenatal care services which is expected to improve medical conditions and reduce health care costs to families.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, February 26, 2015 at 9:30 a.m. in Room 173, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: State Children's Health Insurance Program, Coverage of Prenatal Care Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of $6,405,291 for FY 14-15, $6,569,905 for FY 15-16 and $6,767,002 for FY 16-17. It is anticipated that $432 ($216 SGF and $216 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 73.44 percent in FY 14-15 and 73.55 percent in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $17,710,635 for FY 14-15, $18,269,054 for FY 15-16 and $18,817,126 for FY 16-17. It is anticipated that $216 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 73.44 percent in FY 14-15 and 73.55 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the April 20, 2014 Emergency Rule which amended the provisions governing coverage of prenatal care services in the State Children's Health Insurance Program (SCHIP) in order to include Medicaid coverage for the unborn child(ren) of any pregnant woman with income between 138 percent and 214 percent of the Federal Poverty Level, and amended these provisions for clarification. It is anticipated that implementation of this proposed rule will increase program expenditures in the SCHIP by approximately $24,115,494 for FY 14-15, $24,838,959 for FY 15-16 and $25,584,128 for FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1501#060	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Licensed Professional Counselors Board of Examiners

PLPC and PLMFT Regulations; Fee Structure Adjustments/Changes (LAC 46:LX.Chapters 1-47)

In accordance with the Louisiana Administrative Procedures Act (R.S. 49:950 et seq.) and through the authority of the Mental Health Counselor Licensing Act (R.S. 37:1101 et seq.), the Louisiana Licensed Professional Counselors Board of Examiners hereby gives notice of its intent to adopt rules and to amend existing rules to implement Act 484 of the 2014 Regular Session of the Louisiana Legislature and changes associated with Act 173 if the 2013 Regular Session of the Louisiana Legislature and Act 736 of the 2014 Regular Session of the Louisiana Legislature.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LX. Licensed Professional Counselors Board of Examiners
Subpart 1. Licensed Professional Counselors
Chapter 1. General Provisions

§101. Statutory Authority

A. The Louisiana Licensed Professional Counselors Board of Examiners was initially created and empowered by Act 892 of the 1987 Legislature to provide regulation of the practice of mental health counseling and provide for the regulation of the use of the title "Licensed Professional Counselor" (R.S. 37:1102). Subsequently Act 1195 of 2001 empowered the board to provide regulation of marriage and family therapy and the use of the title "Licensed Marriage and Family Therapist" [R.S.37:1102(B)]. Act 484 of the 2014 Legislative Session empowered the board to provide regulation of the practice and use of the titles “Provisional Licensed Professional Counselor” and “Provisional Licensed Marriage and Family Therapist”. Therefore, the Louisiana Licensed Professional Counselors Board of Examiners establishes the rules and regulations herein pursuant to the authority granted to, and imposed upon said board under the provisions of the Louisiana Revised Statutes, Title 37, Chapter 13, R.S. 37:1101-1123.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:128 (February 2003), amended LR 29:2782 (December 2003), LR 41:

§103. Description of Organization

A. …

1. The licensed professional counselor board shall establish a marriage and family therapy advisory committee, which shall consist of the four board members appointed by the governor from the list of names submitted by the executive board of the Louisiana Association for Marriage and Family Therapy.

A.2. - A.3.a. …

b. examine and qualify all applicants for licensure or provisional licensure as marriage and family therapists and recommend to the board each successful applicant for licensure or provisional licensure, attesting to the applicant’s professional qualifications to be a licensed or a provisionally licensed marriage and family therapist;

c. develop for the board application forms for licensure and provisional licensure pursuant to this Chapter; and

d. maintain complete records of all meetings, proceedings, and hearings conducted by the advisory committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:128 (February 2003), amended LR 29:2782 (December 2003), LR 39:1782 (July 2013), LR 41:

§111. Notification of Change

A. Every licensed or provisional licensed professional counselor and every licensed or provisional licensed marriage and family therapist shall immediately notify in writing the Licensed Professional Counselors Board of Examiners of any and all changes in name, address, and phone number. Failure to comply with this rule within 30 days of change will result in a fine as set forth in §901.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 26:493 (March 2000), amended LR 29:129 (February 2003), LR 41:

Chapter 3. Board Meetings, Procedures, Records, Powers and Duties

§307. Meetings

A. The board shall be domiciled in Baton Rouge and shall hold its meetings in places to be designated by the board. The chair will call meetings after consultation with board members or by a majority of members voting at a regular meeting. Reasonable notice of all board meetings will be given by posting the meeting place and time, seven days before the meeting, on the door of the office of the board and in two places in the building housing the office of the board. The board may examine, approve, revoke, suspend, and renew the license or provisional license of applicants and shall review applications at least once a year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:82 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:129 (February 2003), 39:1782 (July 2013), LR 41:

§309. Quorum

A. Six members of the board shall constitute a quorum of the board at any meeting or hearing for the transaction of business and may examine, approve, and renew the license or provisional license of applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:129 (February 2003), amended LR 29:2783 (December 2003), LR 41:

§313. Code of Ethics

A. The board has adopted the Code of Ethics of the American Counseling Association for Licensed and Provisional Licensed Professional Counselors as specified in R.S. 37:1105(D) and may adopt any revisions or additions deemed appropriate or necessary by the board. Applicable ethics requirements for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists are addressed at §4301 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 22:101 (February 1996), LR 29:130 (February 2003), LR 41:

§315. Records of Proceedings

A. The board shall keep a record of its proceedings including applicant examinations, a register of applicants for licenses, and a register of licensed and provisionally licensed professional counselors which shall be made available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:130 (February 2003), LR 41:

Chapter 5. License and Practice of Counseling

§501. License of Title and Practice

A. As stated in R.S. 37:1111(A), no person shall assume or use the title or designation "licensed professional counselor" or “provisional licensed professional counselor” or engage in the practice of mental health counseling unless the person possesses a valid license issued by the board under the authority of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:130 (February 2003), LR 39:1782 (July 2013), LR 41:

§503. Definitions for Licensed Professional Counselors and Provisional Licensed Professional Counselors

A. For purposes of this rule, the following definitions will apply.

Active Supervision—the process by which a supervisee receives one hour of face-to-face supervision with his/her board-approved supervisor for every 20 hours of direct client contact or at least once every three-month period.

Board—the Louisiana Licensed Professional Counselors Board of Examiners.

Licensed Professional Counselor—any fully licensed person (i.e. one who may practice independently as specified in R.S. 37: 1107(A)) who holds oneself out to the public for a fee or other personal gain, by any title or description of services incorporating the words "licensed professional counselor" or any similar term, and who offers to render professional mental health counseling/psychotherapy services denoting a client-counselor relationship in which the counselor assumes the responsibility for knowledge, skill, and ethical consideration needed to assist individuals, groups, organizations, or the general public, and who implies that he/she is licensed to practice mental health counseling.

Licensee—an individual holding either a full or provisional license issued by the Louisiana Licensed Professional Counselors Board of Examiners. All licensees must accurately identify themselves as fully licensed (i.e., licensed) or provisionally licensed.

Provisional Licensed Professional Counselor—any person by title or description of services incorporating the words "provisional licensed professional counselor" and who, under board-approved supervision (i.e. may not practice independently), renders professional mental health counseling/psychotherapy services denoting a client-counselor relationship in which the licensee assumes the responsibility for knowledge, skill, and ethical consideration needed to assist individuals, groups, organizations, or the general public, and who implies that he/she is provisionally licensed to practice mental health counseling.

Supervisee—a provisional licensed professional counselor under the active supervision of his/her board-approved supervisor.

Mental Health Counseling/Psychotherapy Services—rendering or offering prevention, assessment, diagnosis, and treatment, which includes psychotherapy of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensed or provisional licensed professional counselor which is consistent with his/her professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession. However, nothing in this Chapter shall be construed to authorize any person licensed or provisionally licensed hereunder to administer or interpret tests in accordance with the provision of R.S.37:2352(5), except as provided by LAC 46:LXIII.1702.E, or engage in the practice of psychology or to prescribe, either orally or in writing, distribute, dispense, or administer any medications.

Practice of Mental Health Counseling/Psychotherapy—rendering or offering prevention, assessment, diagnosis, and treatment, which includes psychotherapy of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensed or provisional licensed professional counselor, which is consistent with his/her professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession which includes but is not limited to:

a. - e.ii. …

iii. Appraisals done within the practice of mental health counseling must be performed in accordance with the

requirements of the *Louisiana Administrative Code*, Title 46, Part LX, Chapter 21, Code of Conduct for Licensed Professional Counselors and Provisional Licensed Professional Counselors. A licensed professional counselor must be privileged by this board to utilize formal appraisal instruments and shall limit such use to those areas heretofore mentioned in this Chapter. A licensed professional counselor who wishes to be board privileged to utilize formal appraisal instruments in the appraisal of individuals shall additionally furnish this board satisfactory evidence of formal graduate training in statistics, sampling theory, test construction, test and measurements and individual differences and must renew this privileging designation every two years (as defined in Chapter 7). Formal training shall include a practicum and supervised practice with appraisal instruments.

f. - g. …

h. *Supervision*—the process as defined in Chapter 7, §705 whereby a board-approved supervisor assists a provisional licensed professional counselor in developing expertise in the use of mental health counseling/psychotherapeutic practices.

i. …

j. Repealed.

k. *Internet Counseling*—mental health services delivered over the internet are rendered where the patient/client is situated. All counselors/therapists serving Louisiana residents via internet counseling must be fully licensed in Louisiana and must adhere to all applicable state laws relative to the practice of mental health counseling. R.S. 37:1111 prohibits any person from engaging in the practice of mental health counseling in Louisiana unless he/she possesses a full and valid license issued by the Louisiana LPC Board. No individuals holding a provisional license may engage in internet counseling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 371101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 16:302 (April 1990), LR 18:51 (January, 1992), LR 22:101 (February 1996), LR 24:437 (March 1998), LR 24:2124 (November 1998), LR 26:493 (March 2000), LR 29:130 (February 2003), LR 33:2654 (December 2007), LR 39:1783 (July 2013), LR 41:

§505. Serious Mental Illnesses

A. …

1. *Mental Health Counseling/Psychotherapy Services*—rendering or offering prevention, assessment, diagnosis, and treatment, which include psychotherapy, of mental, emotional, behavioral, and addiction disorders to individuals, groups, organizations, or the general public by a licensee, which is consistent with his/her professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession.

2. However, a licensee may not assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated, unless the licensee consults and collaborates with a practitioner who is licensed or holds a permit with the Louisiana state Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana state Board of Nursing who is certified as a psychiatric nurse practitioner.

B. Applicability. The requirement for collaboration and consultation set forth above shall apply only if any of the following conditions are assessed, diagnosed, or treated by the licensee:

1. - 12. …

C. Definitions

1. - 2.i. …

ii. when the licensee, client, or legal guardian believes that the use of prescribed psychiatric medication may facilitate treatment goals and improve client functioning.

3. As used herein, C*onsultation and Collaboration*—may be specific or general in nature.

i. Specific Consultation and Collaboration. When medication is indicated for clients who have been diagnosed with a serious mental illness and if the client assents to consultation, the licensee must attempt to consult with the client's practitioner within a reasonable time after receiving the consent for the purpose of communicating the diagnosis and plan of care.

(a). If the licensee's attempts to consult directly with the practitioner are not successful, the licensee must notify the practitioner within a reasonable time that he or she is providing services to the client. Also, the licensee must document in the client's file the date of client consent, the date of consultation, or, if attempts to consult did not succeed, the date and manner of notification to the practitioner. The licensee will inform the client of the inability to consult directly with the practitioner and will discuss and document additional options with the client, including that of general *consultation and collaboration*. The licensee will provide information to the practitioner regarding client progress as conditions warrant. *Consultation and collaboration*, for purposes of these rules and otherwise, shall not be construed as supervision. Further, *consultation and collaboration* does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

(b). If attempts to consult directly with a practitioner for a specific consultation are successful, the licensee must document in the client's file the information obtained in the specific consultation. The licensee will provide information to the practitioner regarding client progress as conditions warrant.

ii. General *Consultation and Collaboration*. When medication is indicated for clients who have been diagnosed with a serious mental illness and when the client does not assent to a specific consultation, the licensee must attempt to consult with a practitioner within a reasonable time for a general consultation without releasing any identifying information about the client.

(a). If the licensee's attempts to consult directly with a practitioner are not successful, the licensee must document in the client's file the date of client refusal for consent to consult, the date of general consultation, or if attempts to consult did not succeed, the date and manner of notification to a practitioner.

(b). If attempts to consult directly with a practitioner for a general consultation are successful, the licensee must document in the client's file the information obtained in the general consultation. The licensee will provide general information to the practitioner regarding client progress as conditions warrant.

iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1105(D).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:1784 (July 2013), LR 41:

Chapter 6. Application, Practice, and Renewal Requirements for Provisional Licensed Professional Counselors

§601. General Provisions

A. Pursuant to Act 484 of the 2014 Regular Legislative Session and effective May 1, 2015, an individual previously registered as a counselor intern with the Louisiana Licensed Professional Counselors Board of Examiners and under active board-approved supervision will be issued a provisional license as a provisional licensed professional counselor and subject to R.S. 37:1101-1123 and board rules herein.

1. Any counselor intern who has surpassed their seven-year registration period, with the exception of those granted an extension by the board, must reapply to the board as a provisional licensed professional counselor under current law and board rules in order to practice mental health counseling.

2. Counselor interns granted an extension beyond May 1, 2015 will be issued a provisional license. Such provisional license will become invalid upon expiration of the board granted extension. The individual must then apply under current law and board rules for provisional licensure as a provisional licensed professional counselor or for licensure as a licensed professional counselor in order to practice mental health counseling.

B. The board shall provisionally license to practice all persons who present satisfactory evidence of qualifications as specified in these rules and regulations of the board. No provisional license shall be denied any applicant based upon the applicant's:

1. age;
2. culture;
3. disability;
4. ethnicity;
5. race;
6. religion/spirituality;
7. gender;
8. gender identity;
9. sexual orientation;
10. marital status/partnership;
11. language preference;
12. socioeconomic status; or
13. any basis proscribed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 41:

§603. Provisional Licensed Professional Counselors Licensing Requirements

A. The board shall issue a provisional license to each provisional licensed professional counselor applicant who files an application upon a form designated by the board and in such a manner as the board prescribes, accompanied by such fee required by R.S. 37:1106 and who furnishes satisfactory evidence to the board that he/she:

1. is at least 21 years of age;
2. is of good moral character;
3. is not in violation of any of the provisions of R.S. 37:1101-1123 and the rules and regulations adopted herein;
4. has received a graduate degree, as defined in Chapter 5, the substance of which is professional mental health counseling in content from a regionally-accredited institution of higher education offering a master's and/or doctoral program in counseling that is approved by the board and has accumulated at least 48 graduate credit hours as part of the graduate degree plan containing the eight required areas, the supervised mental health practicum and supervised internship in mental health counseling (as defined in Chapter 5). Applicants may apply post-masters counseling courses towards licensure if their degree program consisted of less than 48 hours. All post-masters counseling courses must be completed with a grade no lower than C. All field experience courses must be completed with a grade of A, B, or P as specified in Chapter 5, Section 503(A)(a)(i)(ii). Beginning September 1, 2015, all applicants whose academic background has not been previously approved by the board, must have accumulated at least 60 graduate credit hours as part of the graduate degree plan containing the eight required areas, the supervised mental health practicum and supervised internship in mental health counseling (as defined in Chapter 5). Applicants may apply post-masters counseling courses towards licensure if their degree program consisted of less than 60 hours;

a. To be eligible for supervision as a provisional licensed professional counselor, the applicant must provide proof of completion of a supervised practicum and internship as listed in §503 (Definitions) and at least one three-credit hour course in each of the following eight content areas. In order for a course to fulfill a content area requirement, it must include in a substantial manner the area in the description for the content areas.

i. Counseling/Psychotherapy Theories of Personality—description:

(a). counseling/psychotherapy theories, including both individual and systems perspectives;

(b). research and factors considered in applications of counseling/psychotherapy theories; or

(c). theories of personality including major theories of personality.

ii. Human Growth and Development—description:

(a). the nature and needs of individuals at developmental levels;

(b). theories of individual and family development and transitions across the life-span;

(c). theories of learning and personality development;

(d). human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology, and environmental factors as they affect both normal and abnormal behavior;

(e). strategies for facilitating development over the lifespan.

iii. Abnormal Behavior—description:

(a). emotional and mental disorders experienced by persons of all ages;

(b). characteristics of disorders;

(c). common nosologies of emotional and mental disorders utilized within the U.S. health care system;

(d). the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*, as published by the American Psychiatric Association;

(e). preferred treatment approaches for disorders based on research;

(f). common medications used by psychiatrists to treat disorders;

(g). working with other health care and mental health care professionals in treating individuals with emotional and mental disorders.

iv. Techniques of Counseling/ Psychotherapy—description:

(a). basic interviewing, assessment, and counseling/psychotherapeutic skills;

(b). counselor characteristics and behaviors that influence helping processes, including:

(i). age;

(ii). gender and ethnic differences;

(iii). verbal and nonverbal behaviors and personal characteristics;

(iv). orientations; and

(v). skills;

(c). client characteristics and behaviors that influence helping processes, including:

(i). age;

(ii). gender and ethnic differences;

(iii). verbal and nonverbal behaviors and personal characteristics;

(iv). traits;

(v). capabilities; and

(vi). life circumstances.

v. Group Dynamics, Processes, and Counseling/Psychotherapy—description:

(a). principles of group dynamics, including:

(i). group process components;

(ii). developmental stage theories; and

(iii). group members' roles and behaviors;

(b). group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(c). theories of group counseling/psychotherapy, including:

(i). commonalities;

(ii). distinguishing characteristics; and

(iii). pertinent research and literature;

(d). group counseling/psychotherapeutic methods, including:

(i). group counselor orientations and behaviors;

(ii). ethical standards;

(iii). appropriate selection criteria and methods; and

(iv). methods of evaluation of effectiveness;

(e). approaches used for other types of group work, including:

(i). task groups;

(ii). prevention groups;

(iii). support group; and

(iv). therapy groups.

vi. Lifestyle and Career Development—description:

(a). career development theories and decision-making models;

(b). career, a vocational, educational, and labor market information resources, visual and print media, and computer-based career information systems;

(c). career development program planning, organization, implementation, administration, and evaluation;

(d). interrelationships among work, family, and other life roles and factors including multicultural and gender issues as related to career development;

(e). career and educational placement, follow-up and evaluation;

(f). assessment instruments and techniques relevant to career planning and decision-making;

(g). computer-based career development applications and strategies, including computer-assisted guidance systems;

(h). career counseling processes, techniques, and resources, including those applicable to specific populations.

vii. Appraisal of Individuals—description:

(a). theoretical and historical bases for assessment techniques;

(b). validity, including evidence for establishing:

(i). content;

(ii). construct; and

(iii). empirical validity;

(c). reliability, including methods of establishing:

(i). stability;

(ii). internal and equivalence reliability;

(d). appraisal methods, including:

(i). environmental assessment;

(ii). performance assessment;

(iii).[a]. individual and group test and inventory methods;

[b]. behavioral observations; and

[c]. computer-managed and computer-assisted methods;

(e). psychometric statistics, including:

(i). types of assessment scores;

(ii). measures of central tendency;

(iii). indices of variability;

(iv). standard errors; and

(v). correlations;

(f). age, gender, ethnicity, language, disability, and culture factors related to the assessment and evaluation of individuals and groups;

(g). strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling.

viii. Ethics and Professional Orientation—description:

(a). ethical standards of the American Counseling Association, state counselor licensure boards, and national counselor certifying agencies;

(b). ethical and legal issues and their applications to various professional activities;

(c). history of the helping professions, including significant factors and events;

(d). professional roles and functions of counselors, including similarities and differences with other mental health professionals;

(e). professional organizations, primarily the American Counseling Association, its divisions, branches, and affiliates, including membership benefits, activities, services to members, and current emphases, professional preparation standards, their evolution, and current applications;

(f). professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues;

(g). public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele.

5. has obtained a Board-Approved Supervisor

a. The provisional licensed professional counselor will identify an individual who agrees to serve as his/her board-approved supervisor. This individual must hold the licensed professional counselor-supervisor designation as issued by the Louisiana LPC Board of Examiners.

b. The provisional licensed professional counselor, along with his/her desired board-approved supervisor, will:

i. provide the board with a written proposal outlining with as much specificity as possible the nature of the counseling duties to be performed by the provisional licensed professional counselor and the nature of the board-approved supervision;

ii. submit this written proposal on forms provided by the board prior to the proposed starting date of the board-approved supervision;

iii. submit, along with the written proposal, the appropriate fee determined by the board.

c. Following the board's review, the provisional licensed professional counselor will be informed by letter either that the proposed supervision arrangement has been approved or that it has been rejected. Any rejection letter will outline, with as much specificity as practical, the reasons for rejection.

d. All proposed supervision arrangements must be approved by the board prior to the starting date of the supervised experience. An applicant may not accrue any supervised experience hours, including face-to-face supervision hours, until the applicant is approved as a provisional licensed professional counselor.

i. Should the provisional licensed professional counselor add a board-approved supervisor, face-to-face supervision hours may not be accrued with the added supervisor until the application for supervision has been filed and approved by the LPC Board.

ii. Should the provisional licensed professional counselor change board-approved supervisors, supervised experience hours, including face-to-face supervision hours, may not be accrued with the new supervisor until the application for supervision has been filed and approved by the LPC Board. If the provisional licensed professional counselor remains under active supervision with his/her current board-approved supervisor, he/she may continue to practice mental health counseling and accrue supervised experience hours until the change is approved by the LPC Board.

iii. A provisional licensed professional counselor may not be directly or indirectly employed or supervised (administrative supervision or board-approved supervision) by a relative of the provisional licensed professional counselor. For example, the licensee's board-approved supervisor cannot be supervised or employed by a relative of the licensee. Relative of the provisional licensed professional counselor is defined as spouse, parent, child, sibling of the whole- or half-blood, grandparent, grandchild, aunt, uncle, one who is or has been related by marriage or has any other dual relationship. Any exception must be approved by the board.

6. has obtained a board-approved practice setting

a. The provisional licensed professional counselor will identify a practice setting wherein he/she may accrue direct and/or indirect supervised experience hours. To obtain approval of a practice setting for accrual of direct client contact hours, the supervisee must engage in the practice of mental health counseling as defined in Chapter 5.

b. The practice setting must be approved by the supervisee's desired and/or designated board-approved supervisor prior to submission of the practice setting on forms provided by the board.

c. Board-approval of the supervisee's practice setting is required in order to begin accruing supervised experience hours at such practice setting,

d. No supervised experience hours (direct, indirect, or face to face supervision) may be accrued at a practice setting that is not approved by the board. Furthermore, should a provisional licensed professional counselor fail to inform the board of a practice setting by submitting appropriate documentation within 30 days of the date of hire at such setting, the provisional licensed professional counselor will forfeit all supervised experience hours accrued and be subject to a fine as defined in Chapter 9 whether or not the setting is approved by the board.

e. The professional practice setting cannot include any practice setting in which the provisional licensed professional counselor operates, manages, or has an ownership interest (e.g., private practice, for-profit, non-profit, etc.).

f. The licensee must be supervised by an administrative supervisor (in addition to receiving active, board-approved supervision) in order to volunteer counseling services or receive a wage for services rendered as an employee or private contractor. The control, oversight, and professional responsibility for provisional licensed professional counselors rests with the licensee's administrative supervisor in the setting in which they are employed, contracted or volunteering.

g. Provisional licensed professional counselors must notify their administrative supervisor of the identity of their board-approved supervisor and the nature of the supervisory activities, including any observations or taping that occurs

with clients, after obtaining the client's permission, in the setting.

h. A licensed mental health professional (e.g. LPC, LMFT, LCSW) must be employed in the professional setting in which the provisional licensed professional counselor is rendering counseling services and be available for case consultation and processing. The provisional licensed professional counselor must have obtained the administrative supervisor's approval of the licensed mental health professional prior to submitting the practice setting for board review. The licensed mental health professional may be the board-approved supervisor or the administrative supervisor if he/she meets each of the aforementioned requirements.

i. Supervised experience accrued by the provisional licensed professional counselor in an exempt setting needs to meet the requirements in this rule if that supervised experience is to meet the requirements for licensure as set forth by R.S. 37:1107(A).

7. has provided to the board a declaration of practices and procedures, with the content being subject to board review and approval.

8. has received a letter from the board certifying that all the requirements for *provisional licensed professional counselor*, as defined in this Chapter, were met before accruing supervised experience hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 41:

§605. Board-Approved Supervised Practice Requirements for Provisional Licensed Professional Counselors

A. Board-Approved Supervision Requirements

1. Supervision is defined as assisting the provisional licensed professional counselor (supervisee) in developing expertise in methods of the professional mental health counseling practice and in developing self-appraisal and professional development strategies. Supervision must comply with standards as set by the board.

2. Pursuant to R.S. 37:1107(A), a supervisee must document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved supervisor, with said supervision occurring over a period of no less than two years and not more than six years from the original date such supervision was approved. A supervisee must remain under supervision of a board-approved supervisor until receiving written notification of approval for licensure.

a.i. Based on the above, the required 3,000 hours of counseling/psychotherapeutic experience shall be accrued in the following manner:

(a). a minimum of 1,900 hours (up to 2,900) in direct counseling/psychotherapeutic services involving individuals, couples, families, or groups;

i. An applicant may utilize supervised direct hours earned in post-master's degree practicum and internship courses in counseling (from a regionally accredited university) toward the required 1900 hours of direct counseling/psychotherapeutic services. In order to be counted, the direct hours earned in practicum and internship courses must have occurred after the applicant has been approved for provisional licensure and is under the supervision of the applicant's board approved supervisor. An applicant may not count hours spent supervising others (i.e., supervision courses, doctoral students supervising master's level students) as direct hours.

(b). a maximum of 1,000 hours in additional client contact, counseling related activities (i.e., case notes, staffing, case consultation, or testing/assessment of clients) or education at the graduate level in the field of mental health as defined above;

i. Five hundred indirect hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board. Practicum and internship courses may not be included in the 30 graduate semester hours that are used to substitute for 500 hours of supervised experience if they are used to count toward an applicant's direct hours.

(c). a minimum of 100 hours of face-to-face supervision by a board-approved supervisor. Up to 25 of the 100 face-to-face hours may be conducted by synchronous videoconferencing.

i. The board recommends one hour of supervision for every 20 hours of direct client contact as outlined in Subclause A.2.a.i.(a). Supervision may not take place via mail, email, or telephone. Telephone, mail, or email contacts with supervisor may be counted under Subclause A.2.a.i.(b) (i.e., consultation), however, it cannot be counted as face to face supervision as defined in Subclause A.2.a.i.(c).

ii. Acceptable modes for supervision of direct clinical contact are the following.

(a.) Individual Supervision. The supervisory session is conducted by the board-approved supervisor(s) with one provisional licensed professional counselor present.

(b.) Group Supervision. The supervisory session is conducted by the board-approved supervisor(s) with no more than 10 provisional licensed professional counselors present.

iii. At least 100 hours of the provisional licensed professional counselor's direct clinical contact with clients must be supervised by the board-approved supervisor(s), as defined below.

(a). At least 50 of these 100 hours must be individual supervision as defined above.

(b). The remaining 50 hours of these 100 hours may be either individual supervision or group supervision as defined above.

B. Responsibility of Supervisee under Board-Approved Supervision

1. During the period of supervised counseling/psychotherapy experience, the only proper identification title is provisional licensed professional counselor or PLPC. Provisional licensed professional counselors shall not identify or represent themselves by any other term or title, including "licensed", "fully licensed", "Licensed Professional Counselor", "LPC", or "counselor".

2. Each provisional licensed professional counselor must provide his/her clients with a disclosure statement (as

outlined in the Appendix of the Code of Conduct) that includes:

a. his/her training status; and

b. the name of his/her supervisor for licensure purposes.

3. Provisional licensed professional counselors must comply with all laws and regulations relating to the practice of mental health counseling (R.S. 37:1101-1123).

4. The provisional licensed professional counselor must maintain contact with his/her board-approved supervisor to ensure that active supervision requirements (as defined in Chapter 5) are met.

5. Provide updates to the board and board-approved supervisor regarding changes in status on forms provided by the board within 30 days of said change. Failure to comply may result in a fine, loss of supervised experience hours, and/or disciplinary action. Changes in status include changes in:

a. relevant personal information, including contact information, physical address, name;

b. relevant practice setting information, including job title/duties, employment status;

c. status with the justice system, including notification of arrest, charges, convictions,

d. status with another licensure/credentialing body, including notification of suspension, revocation, or other disciplinary proceedings/actions.

e. the use of any narcotics, controlled substances, or any alcoholic beverages in a manner that is dangerous to the public or in a manner that impairs the supervisee's ability to provide mental health services to the public.

f. any medical condition which may in any way impair or limit the supervisee's ability to provide mental health services to the public with reasonable skill or safety.

6. The supervisee must maintain documentation of all supervised experience hours by employment location and type of hour (indirect, direct, and face to face supervision). It is recommended that a supervisee obtain the signature of the board-approved supervisor indicating review and approval of documentation at regular intervals.

7. The supervisee must renew his/her provisional license in accordance with Chapter 6, Section 611 and maintain a valid provisional license in order to practice mental health counseling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 41:

§607. Out-of-State Applicants for Provisional Licensed Professional Counselor

A. The decision to approve transfer of any supervised experience hours and board-equivalent supervisors from out-of-state shall be made at the discretion of the board. An out-of-state applicant may transfer up to 2500 supervised experience hours if such hours meet the requirements as stated in Section 605. Out of state supervised experience hours may be endorsed according to the following limits:

1. a maximum of 1600 direct client contact hours;
2. a maximum of 815 indirect hours;
3. a maximum of 85 hours of face-to-face supervision.

a. All face to face supervision hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of provisional licensed professional counselors set forth by the Licensed Professional Counselor Board of Examiners.

B. An applicant must also be in good standing in all jurisdictions in which they are licensed or credentialed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license or credential to practice mental health counseling in the state of Louisiana at the time the act was committed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 41:

§609. Renewal Requirements for Provisional Licensed Professional Counselors

A. A provisional licensed professional counselor shall renew his/her provisional license every two years in the month of October by meeting the following requirements each renewal period:

1. 20 clock hours of continuing education in accordance with Section 611.

2. Submit a renewal fee as prescribed in Chapter 9.

3. Submit supervised experience hours accrued (direct, indirect, face to face supervision) since approval/renewal as a provisional licensed professional counselor.

4. Take National Counselors Examination (NCE) or National Clinical Mental Health Counselors Examination (NCMHCE) and request the National Board of Certified Counselors (NBCC) submission of score report to the board until a passing score is achieved. If a passing score is not achieved, the NCE or NCMHCE must be taken at least once per renewal period. At the discretion of the board, an oral examination may be required as well.

5. Submit an updated declaration statement if there has been a change in the area of focus or area of expertise, with the content being subject to board review and approval. The board, at its discretion, may require the licensee to present satisfactory evidence supporting any changes in area of focus or expertise noted in the declaration statement. All other changes as defined in Chapter 6, Section 605(B)(5) should be submitted to the board within thirty days of said change.

B. The chair shall issue a document renewing the provisional license for a term of two years. The provisional license of any licensee who fails to have his/her provisional license renewed every two years during the month of October shall lapse. An individual with a lapsed license may not practice mental health counseling, identify his/herself as a provisional licensed professional counselor or accrue any supervised experience hours. A lapsed provisional license may be renewed within a period of 90 days or postmarked by January 31 upon payment of all fees and arrears and presentation of all required documentation. After ninety days, the licensee will forfeit all supervised experience hours accrued during that renewal period and must reapply for provisional licensure under current requirements and submit

recent continuing education hours (CEHs) as part of reapplication.

C. The provisional licensee must apply and be approved for licensure within six years from date of approval as a provisional licensed professional counselor. After six years, the licensee will forfeit all supervised experience hours accrued and must reapply for provisional licensure under current requirements and submit recent continuing education hours (CEHs) as part of reapplication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 41:

§611. Continuing Education Requirements for Provisional Licensed Professional Counselors

A. A provisional licensee must accrue 20 clock hours of continuing education by every renewal period every two years. Of the 20 clock hours of continuing education, one and a half clock hours must be accrued in ethics and one and a half clock hours must be accrued in diagnosis (assessment, diagnosis, and treatment under the *Diagnostic and Statistical Manual of Mental Disorders 5*, as published by the American Psychiatric Association).

1. One continuing education hour (CEH) is equivalent to one clock hour.

2. Accrual of continuing education begins only after the date the license was issued.

3. CEHs accrued beyond the required 20 hours may not be applied toward the next renewal period. A provisional licensee renewal period runs November 1 to October 31, every two years.

4. The licensee is responsible for keeping a personal record of his/her CEHs until official notification of renewal is received. Licensees should not forward documentation of CEHs to the board office as they are accrued.

5. At the time of renewal, 10 percent of the licensees will be audited to ensure that the continuing education requirement is being met. Audited licensees will be notified to submit documentation of accrued CEHs.

B. Approved Continuing Education for Provisional Licensed Professional Counselors

1. Continuing education requirements are meant to encourage personal and professional development throughout the licensee's career. For this reason, a wide range of options are offered to accommodate the diversity of licensees' training, experience, and geographic locations.

2. A licensee may obtain the 20 CEHs through one or more of the options listed below. A maximum of 10 CEHs may be obtained through an online format, with the exception of coursework obtained through a regionally accredited institution of higher education.

a. Continuing Education Approved by Other Organizations. Continuing education that is approved by either the American Counseling Association (ACA), its divisions, regions and state branches, Louisiana Counseling Association (LCA), or the National Board of Certified Counselors (NBCC) will be accepted by the board of examiners. One may contact these associations to find out which organizations, groups or individuals are approved providers. One may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner. Credit cannot be granted for: business/governance meetings; breaks; social activities including meal functions, except for actual time of a content speaker. Credit cannot be given for an approved session to persons who leave early from that session. Verification can consist of copies of certificates of attendance.

b. Continuing Education Not Preapproved. For those organizations, groups or individuals that do not carry provider status by one of the associations listed in Subparagraph a of this Paragraph, the continuing education hours will be subject to approval by the Licensed Professional Counselors Board of Examiners at the time of renewal. The board will not pre-approve any type of continuing education. The continuing education must be in one of the 14 approved content areas listed in §611.C, and be given by a qualified presenter. A qualified presenter is considered to be someone at the master's level or above and trained in the mental health field or related services. One may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner. Credit cannot be granted for business/governance meetings, breaks, social activities, including meal functions, except for actual time of a content speaker. Credit cannot be given for an approved session to persons who leave early from that session. Verification for workshops, seminars, or conventions can consist of copies of certificates of attendance. Typically one continuing education unit (CEU) is equivalent to 10 clock hours (CEH).

c. Coursework. CEHs may also be gained by taking coursework (undergraduate or graduate) from a regionally accredited institution in one of the 12 approved content areas for continuing education listed in §611.C. One may take a course for credit or audit a course. In a college or university program, one semester hour is equivalent to 15 clock hours and one quarter hour is equivalent to 10 clock hours. Therefore, 45 CEHs will be given for a three hour university course completed at a regionally accredited university. Verification for coursework can consist of either copies of transcripts for coursework taken for credit or letter of attendance from instructor for courses audited.

d. Home Study (5 hours maximum per renewal period). Journals published by ACA, LCA, professional refereed journals, video presentations, and webinars are all approved home study options. Each option must carry a provider number from either NBCC, ACA, LCA, or other board-approved mental health organizations. Each activity will specify the number of CEHs that will be granted upon completion. Verification consists of a certificate issued by NBCC, ACA, LCA, or certificates from other professional mental health organizations that will be reviewed by the board.

e. Presentations (5 hours maximum per renewal period). Presenters may get credit for original presentations at a rate of five clock hours per one hour presentation. Presenters must meet the qualifications stated in Subparagraph B.2.b above. The presentation must be to the professional community, not to the lay public or a classroom presentation. The presentation must also be in one of the 14 approved content areas listed in §611.C. Verification of the presentation consists of obtaining a letter from the workshop/convention coordinator stating the topic, date, and number of hours of presentation.

f. Publishing (5 hours maximum per renewal period). Authors may receive five clock hours per article or chapter in a book. The article must be published in a professional refereed journal. Both articles and chapters must be in one of the 14 approved content areas listed in §611.C. Verification will consist of either a reprint of the article/chapter, or a copy of the article/chapter, cover of the book/journal and page listing the editor or publisher.

g. Counseling (5 hours maximum per renewal period). One may receive one clock hour of continuing education per counseling hour as a client. To qualify, one must be a client receiving services from a licensed mental health professional having qualifications equal to, or exceeding, those currently required of counselors. Consultation and supervision hours do not qualify. Verification will consist of a letter from the counseling mental health professional verifying client therapy hours.

h. Research (5 hours maximum per renewal period). One may receive one clock hour of continuing education per hour of planning or conduct of, or participation in, counseling or counseling-related research. To qualify, this activity must constitute an original and substantive educational experience for the learner. Verification will consist of a letter from the faculty member or researcher.

C. Approved Content Areas. Continuing education hours must be in one of the following 14 content areas.

1. Counseling Theory—includes a study of basic theories, principles and techniques of counseling and their application in professional settings.

2. Human Growth and Development—includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels, normal and abnormal human behavior, personality theory and learning theory within appropriate cultural contexts.

3. Social and Cultural Foundations—includes studies that provide a broad understanding of societal changes and trends, human roles, societal subgroups, social mores and interaction patterns, and differing lifestyles.

4. The Helping Relationship—includes studies that provide a broad understanding of philosophic bases of helping processes, counseling theories and their applications, basic and advanced helping skills, consultation theories and their applications, client and helper self-understanding and self-development, and facilitation of client or consultee change.

5. Group Dynamics, Processing and Counseling—includes studies that provide a broad understanding of group development, dynamics, and counseling theories, group leadership styles, basic and advanced group counseling methods and skills, and other group approaches.

6. Lifestyle and career development includes:

a. studies that provide a broad understanding of career development theories, occupational and educational information sources and systems, career and leisure counseling, guidance, and education;

b. lifestyle and career decision-making, career development program planning and resources, and effectiveness evaluation.

7. Appraisal of Individuals—includes studies that provide a broad understanding of group and individual educational and psychometric theories and approaches to appraisal, data and information gathering methods, validity and reliability, psychometric statistics, factors influencing appraisals, and use of appraisal results in helping processes.

8. Research and Evaluation—includes studies that provide a broad understanding of types of research, basic statistics, research report development, research implementation, program evaluation, needs assessment, publication of research information, and ethical and legal considerations associated with the conduct of research.

9. Professional Orientation—includes studies that provide a broad understanding of professional roles and functions, professional goals and objectives, professional organizations and associations, professional history and trends, ethical and legal standards, professional preparation standards, professional credentialing and management of private practice and agency settings.

10. Marriage and Family—includes studies that provide a broad understanding of marriage and family theories and approaches to counseling with families and couples. This includes appraisal of family and couples systems and the application of these to counseling families and/or couples.

11. Chemical Dependency—includes studies that provide a broad understanding of chemical dependency issues, theories, and strategies to be applied in the helping relationship for chemical dependency counseling.

12. Supervision—includes studies in theory and techniques of supervision as well as ethical and legal issues, case management, and topics relative to the specific supervised setting.

13. Abnormal includes studies of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, common nosologies of emotional and mental disorders utilized within the U.S. health care system, and the *Diagnostic and Statistical Manual of Mental Disorders 5*, as published by the American Psychiatric Association. This includes:

a. studies of preferred treatment approaches for disorders based on research;

b. common medications used by psychiatrists to treat disorders, and

c. working with other health care and mental health care professionals in treating individuals with emotional and mental disorders.

14. Psychopharmacology includes the scientific study of the effects of drugs on mood, sensation, thinking, and behavior. This also includes a range of substances with various types of psychoactive properties, which involves drugs used in the treatment of psychopathological disorders and drugs of abuse, and focuses on the chemical interactions with the brain.

D. Types of Documentation Needed for Verification

1. Copy of certificate of attendance for workshops, seminars, or conventions.

2. Copy of transcript for coursework taken for credit/letter of attendance from instructor for courses audited.

3. Home study verification form or certificate issued by NBCC/ACA/LCA.

4. Letter from workshop/convention coordinator verifying presentations.

5. Copy of article, cover and editorial board page for publications.

6. Letter from counseling mental health professional verifying number of hours in counseling as a client.

7. Letter from the faculty member or researcher verifying number of hours in research.

8. Letter or certificate from the LPC Board of Examiners, or from the board-approved counseling service organization, verifying number of hours of service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 41:

Chapter 7. Application and Renewal Requirements for Licensed Professional Counselors

§703. Licensed Professional Counselors Licensing Requirements

A. - A.3. …

4. can document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved supervisor, with said supervision occurring over a period of no less than two years and not more than six years from the original date such supervision was approved. Five hundred indirect hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree, provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board provided that in no case the applicant has less than 2,000 hours of board-approved supervised experience within the aforementioned time limits.

5. has declared special competencies and demonstrated professional competence therein by passing a written exam (NCE or NCMHCE) and, at the discretion of the board, an oral examination as shall be prescribed by the board.

6. has received a graduate degree, as defined in Chapter 5, the substance of which is professional mental health counseling in content from a regionally-accredited institution of higher education offering a master's and/or doctoral program in counseling that is approved by the board in accordance with the requirements listed in Chapter 6, Section 603.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:269 (March 1992), LR 22:102 (February 1996), LR 24:1294 (July 1998), LR 24:2124 (November 1998), LR 29:131 (February 2003), LR 39:1785 (July 2013), LR 41:

§705. Renewal

A. A licensed professional counselor shall renew his/her license and privileging designation(s) every two years in the month of June by meeting the requirement that 40 clock hours of continuing education be obtained prior to each renewal date every two years in an area of professional mental health counseling as approved by the board and by paying a renewal fee.

B. The licensee should submit a declaration statement with any changes not reviewed and approved by the board, including a change in area of expertise or area of focus, with the content being subject to board review and approval. The board, at its discretion, may require the licensee to present satisfactory evidence supporting any changes in areas of expertise or focus noted in the declaration statement.

C. The chair shall issue a document renewing the license for a term of two years.

D. The license or privileging designation of any mental health counselor who fails to have this license or privileging designation renewed every two years during the month of June shall lapse; however, the failure to renew said license or privileging designation shall not deprive said counselor the right of renewal thereafter.

1. A lapsed license or privileging designation may be renewed within a period of two years after the date of licensure lapse upon payment of all fees in arrears and presentation of evidence of completion of the continuing education requirement.

2. Application for renewal after two years from the date of licensure lapse will not be considered for renewal; the individual must apply under the current licensure and/or privileging guidelines and submit recent continuing education hours (CEHs) as part of application for licensure or privileging designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

§707. Renewal Requirements for Licensed Professional Counselors and Board Approved Supervisors

A. General Guidelines

1. A licensee must accrue 40 clock hours of continuing education by every renewal period every two years. Of the 40 clock hours of continuing education, 3 clock hours must be accrued in ethics and 6 clock hours must be accrued in diagnosis (assessment, diagnosis, and treatment under the *Diagnostic and Statistical Manual of Mental Disorders 5*, as published by the American Psychiatric Association). A board-approved supervisor must accrue 3 clock hours (of the required 40 clock hours of continuing education) in supervision.

2. One continuing education hour (CEH) is equivalent to one clock hour.

3. Accrual of continuing education begins only after the date the license was issued.

4. CEHs accrued beyond the required 40 hours may not be applied toward the next renewal period. Renewal periods run from July 1 to June 30, every two years.

5. The licensee is responsible for keeping a personal record of his/her CEHs until official notification of renewal is received. Licensees should not forward documentation of CEHs to the board office as they are accrued.

6. At the time of renewal, 10 percent of the licensees will be audited to ensure that the continuing education requirement is being met. Audited licensees will be notified to submit documentation of accrued CEHs.

B. Approved Continuing Education for Licensed Professional Counselors and Board Approved Supervisors

1. Continuing education requirements are meant to encourage personal and professional development throughout the counselor's career. For this reason, a wide

range of options are offered to accommodate the diversity of counselors' training, experience, and geographic locations.

2. A licensee may obtain the 40 CEHs through one or more of the options listed below. Effective July 1, 2014 a maximum of 20 CEHs may be obtained through an online format, with the exception of coursework obtained through a regionally accredited institution of higher education.

a. Continuing Education Approved by Other Organizations. Continuing education that is approved by either the American Counseling Association (ACA), its divisions, regions and state branches, Louisiana Counseling Association (LCA), or the National Board of Certified Counselors (NBCC) will be accepted by the Board of Examiners. One may contact these associations to find out which organizations, groups or individuals are approved providers. One may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner. Credit cannot be granted for: business/governance meetings; breaks; social activities including meal functions, except for actual time of a content speaker. Credit cannot be given for an approved session to persons who leave early from that session. Verification can consist of copies of certificates of attendance.

b. Continuing Education Not Preapproved. For those organizations, groups or individuals that do not carry provider status by one of the associations listed in Subparagraph a of this Paragraph, the continuing education hours will be subject to approval by the Licensed Professional Counselors Board of Examiners at the time of renewal. The board will not pre-approve any type of continuing education. The continuing education must be in one of the 14 approved content areas listed in §707.C, and be given by a qualified presenter. A qualified presenter is considered to be someone at the master's level or above and trained in the mental health field or related services. One may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner. Credit cannot be granted for business/governance meetings, breaks, social activities, including meal functions, except for actual time of a content speaker. Credit cannot be given for an approved session to persons who leave early from that session. Verification for workshops, seminars, or conventions can consist of copies of certificates of attendance. Typically one continuing education unit (CEU) is equivalent to 10 clock hours (CEH).

c. Coursework. CEHs may also be gained by taking coursework (undergraduate or graduate) from a regionally accredited institution in one of the 14 approved content areas for continuing education listed in §707.C. One may take a course for credit or audit a course. In a college or university program, one semester hour is equivalent to 15 clock hours and one quarter hour is equivalent to 10 clock hours. Therefore, 45 CEHs will be given for a three hour university course completed at a regionally accredited university. Verification for coursework can consist of either copies of transcripts for coursework taken for credit or letter of attendance from instructor for courses audited.

d. Home Study (10 hours maximum per renewal period, effective July 1, 2014). Journals published by ACA, LCA, professional refereed journals, video presentations, and webinars are all approved home study options. Each option must carry a provider number from either NBCC, ACA, LCA, or other board-approved mental health organizations. Each activity will specify the number of CEHs that will be granted upon completion. Verification consists of a certificate issued by NBCC, ACA, LCA, or certificates from other professional mental health organizations that will be reviewed by the board.

e. Presentations (10 hours maximum per renewal period, effective July 1, 2014). Presenters may get credit for original presentations at a rate of five clock hours per one hour presentation. Presenters must meet the qualifications stated in Subparagraph B.2.b above. The presentation must be to the professional community, not to the lay public or a classroom presentation. The presentation must also be in one of the 14 approved content areas listed in §707.C. Verification of the presentation consists of obtaining a letter from the workshop/convention coordinator stating the topic, date, and number of hours of presentation.

f. Publishing (10 hours maximum per renewal period, effective July 1, 2014). Authors may receive five clock hours per article or chapter in a book. The article must be published in a professional refereed journal. Both articles and chapters must be in one of the 14 approved content areas listed in §707.C. Verification will consist of either a reprint of the article/chapter, or a copy of the article/chapter, cover of the book/journal and page listing the editor or publisher.

g. Counseling (10 hours maximum per renewal period). One may receive one clock hour of continuing education per counseling hour as a client. To qualify, one must be a client receiving services from a licensed mental health professional having qualifications equal to, or exceeding, those currently required of counselors. Consultation and supervision hours do not qualify. Verification will consist of a letter from the counseling mental health professional verifying client therapy hours.

h. Research (10 hours maximum per renewal period, effective July 1, 2014). One may receive one clock hour of continuing education per hour of planning or conduct of, or participation in, counseling or counseling-related research. To qualify, this activity must constitute an original and substantive educational experience for the learner. Verification will consist of a letter from the faculty member or researcher.

i. Peer Supervision (10 hour maximum per renewal period). One may receive one clock hour of continuing education per hours of performing peer supervision activities. For example, case work consultation.

C. Approved Content Areas. Continuing education hours must be in one of the following 14 content areas.

1. Counseling Theory—includes a study of basic theories, principles and techniques of counseling and their application in professional settings.

2. Human Growth and Development—includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels, normal and abnormal human behavior, personality theory and learning theory within appropriate cultural contexts.

3. Social and Cultural Foundations—includes studies that provide a broad understanding of societal changes and trends, human roles, societal subgroups, social mores and interaction patterns, and differing lifestyles.

4. The Helping Relationship—includes studies that provide a broad understanding of philosophic bases of

helping processes, counseling theories and their applications, basic and advanced helping skills, consultation theories and their applications, client and helper self-understanding and self-development, and facilitation of client or consultee change.

5. Group Dynamics, Processing and Counseling—includes studies that provide a broad understanding of group development, dynamics, and counseling theories, group leadership styles, basic and advanced group counseling methods and skills, and other group approaches.

6. Lifestyle and career development includes:

a. studies that provide a broad understanding of career development theories, occupational and educational information sources and systems, career and leisure counseling, guidance, and education;

b. lifestyle and career decision-making, career development program planning and resources, and effectiveness evaluation.

7. Appraisal of Individuals—includes studies that provide a broad understanding of group and individual educational and psychometric theories and approaches to appraisal, data and information gathering methods, validity and reliability, psychometric statistics, factors influencing appraisals, and use of appraisal results in helping processes.

8. Research and Evaluation—includes studies that provide a broad understanding of types of research, basic statistics, research report development, research implementation, program evaluation, needs assessment, publication of research information, and ethical and legal considerations associated with the conduct of research.

9. Professional Orientation—includes studies that provide a broad understanding of professional roles and functions, professional goals and objectives, professional organizations and associations, professional history and trends, ethical and legal standards, professional preparation standards, professional credentialing and management of private practice and agency settings.

10. Marriage and Family—includes studies that provide a broad understanding of marriage and family theories and approaches to counseling with families and couples. This includes appraisal of family and couples systems and the application of these to counseling families and/or couples.

11. Chemical Dependency—includes studies that provide a broad understanding of chemical dependency issues, theories, and strategies to be applied in the helping relationship for chemical dependency counseling.

12. Supervision—includes studies in theory and techniques of supervision as well as ethical and legal issues, case management, and topics relative to the specific supervised setting.

13. Abnormal includes studies of emotional and mental disorders experienced by persons of all ages, characteristics of disorders, common nosologies of emotional and mental disorders utilized within the U.S. health care system, and the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*, as published by the American Psychiatric Association. This includes:

a. studies of preferred treatment approaches for disorders based on research;

b. common medications used by psychiatrists to treat disorders, and

c. working with other health care and mental health care professionals in treating individuals with emotional and mental disorders.

14. Psychopharmacology includes the scientific study of the effects of drugs on mood, sensation, thinking, and behavior. This also includes a range of substances with various types of psychoactive properties, which involves drugs used in the treatment of psychopathological disorders and drugs of abuse, and focuses on the chemical interactions with the brain.

D. Types of Documentation Needed for Verification

1. Copy of certificate of attendance for workshops, seminars, or conventions.

2. Copy of transcript for coursework taken for credit/letter of attendance from instructor for courses audited.

3. Home study verification form or certificate issued by NBCC/ACA/LCA.

4. Letter from workshop/convention coordinator verifying presentations.

5. Copy of article, cover and editorial board page for publications.

6. Letter from counseling mental health professional verifying number of hours in counseling as a client.

7. Letter from the faculty member or researcher verifying number of hours in research.

8. Letter or certificate from the LPC Board of Examiners, or from the board-approved counseling service organization, verifying number of hours of service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

Chapter 8. Licensed Professional Counselor Supervisors

§801. Licensed Professional Counselor Supervisor Requirements

A. Qualifications of a Supervisor of Provisional Licensed Professional Counselors

1. Supervision of provisional licensed professional counselors is a specialty area and requires privileging review. Those individuals who may provide supervision to provisional licensed professional counselors must meet the following requirements.

a. Licensure Requirements. The supervisor must hold a Louisiana license as a licensed professional counselor.

b. Counseling Practice. The supervisor must have been practicing mental health counseling in their setting (i.e., school, agency, private practice) for at least five years. Two of the five years experience must be post licensing experience.

c. Training in Supervision. Supervisors must have successfully completed either Clauses i or ii below.

i. Graduate-Level Academic Training. At least one graduate-level academic course in counseling supervision. The course must have included at least 45 clock hours (equivalent to a three credit hour semester course) of supervision training.

ii. Professional Training. A board-approved professional training program in supervision. The training program must be a minimum of 25 direct clock hours with

the trainers and meet presentation standards established by the board.

2. A supervisor may not be a relative of nor be employed by a relative of the provisional licensed professional counselor. Relative of the provisional licensed professional counselor is defined as spouse, parent, child, sibling of the whole- or half-blood, grandparent, grandchild, aunt, uncle, one who is or has been related by marriage or has any other dual relationship.

3. No person shall serve as a supervisor if his/her license is lapsed, expired, or subject to terms of probation, suspension, or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

§803. Supervised Experience of Provisional Licensed Professional Counselors

A. Supervision Requirements

1. Supervision is defined as assisting the provisional licensed professional counselor in developing expertise in methods of the professional mental health counseling practice and in developing self-appraisal and professional development strategies. Supervision must comply with standards as set by the board.

2. A supervisor may not supervise more than 10 provisional licensed professional counselors at any given time.

3. Supervisors of provisional licensed professional counselors, as defined in these rules, have the responsibility of assisting provisional licensed professional counselors in increasing their skills as a mental health professional. Supervisors, as defined in these rules, have no control, oversight, or professional responsibility for the services of provisional licensed professional counselors whom they are supervising, unless a supervisor also serves as the administrative supervisor of a provisional licensed professional counselors in the setting in which the provisional licensed professional counselor is employed or contracted or is rendering counseling services on a volunteer basis. The control, oversight, and professional responsibility for provisional licensed professional counselors rests with the provisional licensed professional counselor's administrative supervisor in the setting in which they are employed or contracted or are rendering counseling services on a volunteer basis. A licensed mental health professional (e.g. LPC, LMFT, LCSW), not necessarily the board-approved supervisor, must be employed in the professional setting in which the provisional licensed professional counselor is rendering counseling services and be available for case consultation and processing. In obtaining permission for outside supervision, provisional licensed professional counselors must notify their administrative supervisor of the identity of their supervisor for the purpose of gaining the supervised experience for licensure and the nature of the supervisory activities, including any observations or taping that occurs with clients, after obtaining the client's permission, in the setting.

4. The process of supervision must encompass multiple modes of supervision, including regularly scheduled live observation of counseling sessions (where possible) and review of audiotapes and/or videotapes of counseling sessions. The process may also include discussion of the provisional licensed professional counselor's self-reports, microtraining, interpersonal process recall, modeling, role-playing, and other supervisory techniques. (Supervision as defined in these rules does not require the approved supervisor to be in the same room with the provisional licensed professional counselor during the provisional licensed professional counselor's provision of services to clients.)

5. The supervisor must provide nurturance and support to the provisional licensed professional counselor, explaining the relationship of theory to practice, suggesting specific actions, assisting the provisional licensed professional counselor in exploring various models for practice, and challenging discrepancies in the provisional licensed professional counselor's practice.

6. The supervisor must ensure the provisional licensed professional counselor's familiarity with important literature in the field of counseling, LPC Board rules, regulations, guidelines, policies, and position statements as well as state law.

7. The supervisor must provide training appropriate to the provisional licensed professional counselor's intended area of expertise and practice.

8. The supervisor must model effective professional counseling practice.

9. The supervisor must ensure that the mental health counseling and the supervision of the mental health counseling is completed in an appropriate professional setting.

10. The provisional licensed professional counselor must have received a letter from the board certifying that all the requirements for provisional licensed professional counselor, as defined in this Chapter, were met.

11. The professional setting cannot include private practice in which the provisional licensed professional counselor operates, manages, or has an ownership interest in the private practice.

12. Supervisors may employ provisional licensed professional counselors in their private practice setting. The supervisor may bill clients for services rendered by the provisional licensed professional counselor, however, under no circumstances can the provisional licensed professional counselor bill clients directly for services rendered by him/herself.

13. The supervisor must certify to the board that the provisional licensed professional counselor has successfully complied with all requirements for supervised counseling experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

Chapter 9. Fees

§901. General

A. The board shall collect the following fees.

1. Licensure Application, License and Seal—$200
2. Out of State Licensure Application, License, and Seal—$300
3. Provisional Licensure Application and License—$100
4. Out of State Provisional Licensure Application and License—$150
5. Application for Appraisal, Board-Approved Supervisor, and Other Specialty Areas—$100
6. Application for Change/Additional Board-Approved Supervisor—$50
7. Application for Expedited Review—$55
8. Renewal of License—$170
9. Renewal of Provisional License—$85
10. Renewal of Appraisal, Board-Approved Supervisor, and Other Specialty Areas—$50
11. Late Fee for Renewal of License—$55
12. Late Fee for Renewal of Provisional License—$55
13. Late Fee for Renewal of Appraisal, Board-Approved Supervisor, and Other Specialty Areas—$25
14. Reissue of License Duplicate—$25
15. Name Change on Records—$25
16. Copy of File—$25
17. Copy of Any Documents—Cost Incurred

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:136 (February 2003), amended LR 29:2783 (December 2003), LR 39:1790 (July 2013), LR 41:

§903. Deposit and Use of Fees and Funds

A. All fees collected and all gifts or grants shall be deposited and credited to the account of the board in a licensed financial institution of the board's choosing. The funds of the board may be used for printing, travel expenses of the board, and for other necessary expenses as are essential to carrying out of the provisions of R.S. 37:1101-1123. Expenses shall be paid under the written direction of the chair of the board in accordance with procedures established by the Division of Administration. Any surplus at the end of the fiscal year shall be retained by the board for future expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:84 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:137 (February 2003), LR 39:1790 (July 2013), LR 41:

Chapter 11. Endorsement and Expedited Processing

§1101. Endorsement

A. Upon recommendation of the board, the board shall issue a license to any person who has been licensed as a licensed professional counselor and has actively practiced mental health counseling for at least five years in another jurisdiction. The applicant must submit an application on forms prescribed by the board in the prescribed manner and pay the required licensure fee. Applicants must also provide proof of having passed the National Counselor Examination (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE) or successfully complete an oral exam administered by the board. An applicant must submit documentation of at least 40 CEHs, in accordance with the requirements listed in Chapter 7, within two years of the date of application for licensure endorsement in Louisiana. An applicant must also be in good standing in all jurisdictions in which they are licensed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice mental health counseling in the state of Louisiana at the time the act was committed.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 39:1790 (July 2013), LR 41:

Chapter 13. Disciplinary Proceedings for Licensed Professional Counselors

§1301. Causes for Administrative Action

A. The board, after due notice and hearing as set forth herein and the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., may withhold, deny, revoke or suspend any license issued or applied for or otherwise discipline a Licensed Professional Counselor on a finding that the person has violated the Louisiana Mental Health Counselor Licensing Act, any of the rules and regulations promulgated by the board, the Code of Ethics of the American Counseling Association, or prior final decisions and/or consent orders involving the Licensed Professional Counselor, Provisional Licensed Professional Counselor, or applicant for licensure or provisional licensure. Sometimes hereinafter in this Chapter, where the context allows a Licensed Professional Counselor, Provisional Licensed Professional Counselor, or applicant for licensure or provisional licensure may be referred to as "person."

B. The board shall also deny, revoke or suspend any license or provisional license issued or applied for, or otherwise discipline a Licensed Professional Counselor or Provisional Licensed Professional Counselor on a finding that such person has violated any other applicable state law which themselves requires denial, revocation, or suspension of the license of such Licensed Professional Counselor, Provisional Licensed Professional Counselor, or applicant. Such statutes include, but are not limited to R.S. 37:2951 et seq. (nonpayment of certain student loans), and R.S. 37:2952 et seq. (nonpayment of child support).

C. In addition to the Code of Conduct adopted by the LPC Board as Chapter 21, §2101-2117, the following actions or inactions by a licensed professional counselor or provisional licensed professional counselor shall also be considered ethical violations by a licensed professional counselor or provisional licensed professional counselor which may allow denial revocation, or suspension of license or provisional license.

1. - 3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional

Counselors, LR 14:84 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:837 (October 1989), LR 17:778 (August 1991), LR 18:52 (January 1992), LR 25:259 (February 1999), LR 29:137 (February 2003), LR 41:

§1303. Disciplinary Process and Procedures

A. - B. …

C. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the person did certain acts or omissions and, if he/she did, whether those acts or omissions violated the Louisiana Mental Health Counselor Licensing Act, the rules and regulations of the board, the code of ethics of the American Counseling Association, or prior final decisions and/or consent orders involving the licensed professional counselor, provisional licensed professional counselor, or applicant for licensure or provisional licensure and to determine the appropriate disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:259 (February 1999), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:137 (February 2003), LR 39:1791 (July 2013), LR 41:

§1305. Initiation of Complaints

A. - B. …

C. Pursuant to its authority to regulate this industry, the board through its Ad Hoc Committee on Disciplinary Affairs, may conduct investigations into alleged violations by a licensed professional counselor, provisional licensed professional counselor, or applicant of this Chapter or rules and regulations promulgated pursuant thereto, may issue subpoenas to secure evidence of alleged violations of the Louisiana Mental Health Counselor Licensing Act, any of the rules and regulations promulgated by the board, the Code of Ethics of the American Counseling Association, or prior final decisions and/or consent orders involving the licensed professional counselor, provisional licensed professional counselor, or applicant for licensure. The confidential or privileged records of a patient or client which are subpoenaed are to be sanitized by the custodian of such records so as to maintain the anonymity of the patient or client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:260 (February 1999), amended LR 26:496 (March 2000), LR 29:138 (February 2003), LR 39:1791 (July 2013), LR 41:

§1309. Formal Hearing

A. The board has the authority, granted by R.S. 37:1101 et seq., to bring administrative proceedings against persons to whom it has issued a license to practice as a licensed professional counselor, or provisional license as a provisional licensed professional counselor, or any applicant requesting a license or provisional license. The person has the right to:

A.1. - C.12.a.iii. …

b. Deliberation

i. - ii. …

iii. after considering and voting on each charge, the board will vote on a resolution to dismiss the charges, withhold, deny, revoke or suspend any license or provisional license issued or applied for or otherwise discipline a licensed professional counselor, provisional licensed professional counselor, or applicant for licensure or provisional licensure; and

iv. the board by affirmative vote of a majority of those members voting, shall be needed to withhold, deny, revoke, or suspend any license or provisional license issued or applied for in accordance with the provisions of this Chapter or otherwise discipline a licensed professional counselor, provisional licensed professional counselor, or applicant.

c. …

13. Every order of the board shall take effect immediately on its being rendered unless the board in such order fixes a probationary period for an applicant, or licensee, or provisional licensee. Such order shall continue in effect until expiration of any specified time period or termination by a court of competent jurisdiction. The board shall notify all licensees and provisional licensees of any action taken against a licensee or provisional licensees and may make public its orders and judgment in such manner and form as it deems proper if such orders and judgments are not consent orders or compromise judgments.

14.a. - 14.c.iv. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:260 (February 1999), amended LR 26:496 (March 2000), LR 29:138 (February 2003), LR 39:1791 (July 2013), LR 41:

§1315. Refusal to Respond or Cooperate with the Board

A. …

B. If the person refuses to reply to the board's inquiry or otherwise cooperate with the board, the board shall continue its investigation. The board shall record the circumstances of the person's failure to cooperate and shall inform the person that the lack of cooperation may result in action which could eventually lead to the withholding, denial, revocation or suspension of his/her license, provisional license, or application for licensure or provisional licensure, or otherwise issue appropriate disciplinary sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:262 (February 1999), amended LR 29:140 (February 2003), LR 41:

§1317. Judicial Review of Adjudication

A. Any person whose license, provisional license, or application for licensure or provisional licensure, has been withheld, denied, revoked or suspended or otherwise disciplined by the board shall have the right to have the proceedings of the board reviewed by the state district court for the parish of East Baton Rouge, provided that such petition for judicial review is made within 30 days after the notice of the decision of the board. If judicial review is granted, the board's decision is enforceable in the interim unless the court orders a stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:263 (February 1999), amended LR 29:141 (February 2003), LR 41:

§1321. Reinstatement of Suspended or Revoked License or Provisional License

A. The board is authorized to suspend the license of a licensed professional counselor and the provisional license of a provisional licensed professional counselor for a period not exceeding two years. At the end of this period, the board shall re-evaluate the suspension and may recommend to the chair the reinstatement or revocation of the license or provisional license. A person whose license or provisional license has been revoked may apply for reinstatement after a period of not less than two years from the date such denial or revocation is legally effective. The board may, upon favorable action by a majority of the board members present and voting, recommend such reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 25:263 (February 1999), amended LR 29:141 (February 2003), LR 39:1792 (July 2013), LR 41:

§1327. Disciplinary Costs and Fines

A. The board may assess and collect fines not to exceed five thousand dollars for violation of any causes for administrative action as specified in Section 1301.

B. The board may assess all costs incurred in connection with disciplinary proceedings including but limited to the costs of an investigator, stenographer, legal fees, or witness fees, and any costs and fees incurred by the board on any judicial review or appeal, for any licensee who has been found in violation of any causes for administrative action as specified in 1301.

C. After the decision of the board becomes final and delays for judicial review have expired, all costs and fees must be paid no later than ninety days or within a time period specified by board.

D. The board may withhold any issuance or reissuance of any license or certificate until all costs and fees are paid.

E. A person aggrieved by a final decision of the board who prevails upon judicial review may recover reasonable costs as defined in R.S. 37:1106(D)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

Chapter 15. Privileged Communication for Licensed Professional Counselors and Provisional Licensed Professional Counselors

§1501. Privileged Communications with Clients

A. The confidential relations and communications between a licensee and client are placed upon the same basis as those provided by statute between an attorney and client. Nothing in these rules shall be construed to require that any such privileged communication be disclosed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:85 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:141 (February 2003), LR 41:

Chapter 17. Exclusions for Licensed Professional Counselors

§1703. Exemptions

A. - C. …

D. Any persons licensed, certified, or registered under any other provision of the state law, as long as the services rendered are consistent with their laws, professional training, and code of ethics, provided they do not represent themselves as licensed professional counselors, provisional licensed professional counselors, or mental health counselors, unless they have also been licensed under the provisions of R.S. 37:1107.

E. Any priest, rabbi, Christian Science practitioner, or minister of the gospel of any religious denomination, provided they are practicing within the employment of their church or religious affiliated institution and they do not represent themselves as licensed professional counselors, provisional licensed professional counselors, or mental health counselors unless they have also been licensed under the provisions of R.S. 37:1107.

F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:85 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:545 (July 1989), LR 22:103 (February 1996), LR 29:142 (February 2003), LR 39:1792 (July 2013), LR 41:

Chapter 21. Code of Conduct for Licensed Professional Counselors

§2101. Preamble

A. …

B. Specification of a code of conduct enables the board to clarify to present and future licensees and to those served by licensees the responsibilities held in common by persons practicing mental health counseling.

C. ...

D. The existence of this code of conduct serves to govern the practice of mental health counseling and the professional functioning of licensed professional counselors and provisional licensed professional counselors in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:438 (March 1998), LR 29:142 (February 2003), LR 39:1792 (July 2013), LR 41:

§2103. Counseling Relationship

A. Licensees encourage client growth and development in ways that foster the interest and welfare of clients and promote formation of healthy relationships. Licensees actively attempt to understand the diverse cultural backgrounds of the clients they serve. Licensees also explore their own cultural identities and how these affect their values and beliefs about the counseling process. Licensees are encouraged to contribute to society by devoting a portion of

their professional activity to services for which there is little or no financial return (pro bono publico).

1. Welfare of Those Served by Licensees

a. Primary Responsibility. The primary responsibility of licensees is to respect the dignity and to promote the welfare of clients.

b. Records. Licensees maintain records necessary for rendering professional services to their clients and as required by laws (see Chapter 15, §1505.A.), regulations, or agency or institution procedures. Licensees include sufficient and timely documentation in their client records to facilitate the delivery and continuity of needed services. Licensees take reasonable steps to ensure that documentation in records accurately reflects client progress and services provided. If errors are made in client records, licensees take steps to properly note the correction of such errors according to agency or institutional policies.

c. Counseling Plans. Licensees and their clients work jointly in devising integrated, counseling plans that offer reasonable promise of success and are consistent with abilities and circumstances of clients. Licensees and clients regularly review counseling plans to ensure their continued viability and effectiveness, respecting the freedom of choice of clients.

d. Support Network Involvement. Licensees recognize that support networks hold various meanings in the lives of clients and consider enlisting the support, understanding, and involvement of others (e.g., religious/spiritual/community leaders, family members, friends) as positive resources, when appropriate, with client consent.

e. Employment Needs. Licensees work with their clients considering employment in jobs that are consistent with the overall abilities, vocational limitations, physical restrictions, general temperament, interest and aptitude patterns, social skills, education, general qualifications, and other relevant characteristics and needs of clients. When appropriate, licensees appropriately trained in career development will assist in the placement of clients in positions that are consistent with the interest, culture, and the welfare of clients, employers, and/or the public.

2. Informed Consent in the Counseling Relationship

a. Informed Consent. Clients have the freedom to choose whether to enter into or remain in a counseling relationship and need adequate information about the counseling process, and the counselor. Licensees have an obligation to review, in writing and verbally with clients, the rights and responsibilities of both the licensee and the client. Informed consent is an ongoing part of the counseling process, and licensees appropriately document discussions of informed consent throughout the counseling relationship.

b. Types of Information Needed

i. Licensees explicitly explain to clients the nature of all services provided. They inform clients about issues such as, but not limited to, the following:

(a). the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services;

(b). the licensee's qualifications, credentials, and relevant experience;

(c). continuation of services upon the incapacitation or death of a counselor; and

(d). other pertinent information.

ii. Licensees take steps to ensure that clients understand the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements.

iii. - iii.(d). …

c. Development and Cultural Sensitivity. Licensees communicate information in ways that are both developmentally and culturally appropriate. Licensees use clear and understandable language when discussing issues related to informed consent. When clients have difficulty understanding the language used by licensees, they provide necessary services (e.g., arranging for a qualified interpreter or translator) to ensure comprehension by clients. In collaboration with clients, licensees consider cultural implications of informed consent procedures and, where possible, licensees adjust their practices accordingly.

d. Inability to Give Consent. When counseling minors or persons unable to give voluntary consent, licensees seek the assent of clients to services, and include them in decision making as appropriate. Licensees recognize the need to balance the ethical rights of clients to make choices, their capacity to give consent or assent to receive services, and parental or familial legal rights and responsibilities to protect these clients and make decisions on their behalf.

3. Clients Served by Others. When licensees learn that their clients are in a professional relationship with another mental health professional, they request written release of information that the clients sign in order to communicate with other professionals and strive to establish positive and collaborative professional relationships.

4. Avoiding Harm and Imposing Values

a. Avoiding Harm. Licensees act to avoid harming their clients, trainees, and research participants and to minimize or to remedy unavoidable or unanticipated harm.

b. Personal Values. Licensees are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Licensees respect the diversity of clients, trainers, and research participants.

5. Roles and Relationships with Clients

a. Current Clients. Sexual or romantic licensee-client interaction or relationships with current clients, their romantic partners, or their family members are prohibited.

b. Former Clients. Sexual or romantic client interactions or relationships with former clients, their romantic partners, or their family members are prohibited for a period of five years following the last professional contact. Licensees, before engaging in sexual or romantic interactions or relationships with clients their romantic partners, or client family members after five years following the last professional contact, demonstrate forethought and document (in written form) whether the interactions or relationships can be viewed as exploitive in some way and/or whether there is still potential to harm the former client; in cases of potential exploitation and/or harm, the counselor avoids entering such an interaction or relationship.

c. Nonprofessional Interactions or Relationships (other than sexual or romantic interactions or relationships). Licensee-client nonprofessional relationships with clients, former clients, their romantic partners, or their family members should be avoided, except when the interaction is potentially beneficial to the client.

d. Potentially Beneficial Interactions. When a licensee-client nonprofessional interaction with a client or former client may be potentially beneficial to the client or former client, the licensee must document in case records, prior to the interaction (when feasible), the rationale for such an interaction, the potential benefit, and anticipated consequences for the client or former client and other individuals significantly involved with the client or former client. Such interactions should be initiated with appropriate client consent. Where unintentional harm occurs to the client or former client, or to an individual significantly involved with the client or former client, due to the non professional interaction, the licensee must show evidence of an attempt to remedy such harm. Examples of potentially beneficial interactions include, but are not limited to:

i. - iii. …

e. Role Changes in the Professional Relationship. When a licensee changes a role from the original or most recent contracted relationship, he or she obtains informed consent from the client and explains the right of the client to refuse services related to the change. Examples of role changes include:

i. - ii. …

iii. changing from a licensee to a researcher role (i.e., enlisting clients as research participants), or vice versa; and

iv. changing from a licensee to a mediator role, or vice versa.

(a). Clients must be fully informed of any anticipated consequences (e.g., financial, legal, personal, or therapeutic) of licensee role changes.

6. Roles and Relationships at Individual, Group, Institutional and Societal Levels

a. Advocacy. When appropriate, licensees advocate at individual, group, institutional, and societal levels to examine potential barriers and obstacles that inhibit access and/or the growth and development of clients.

b. Confidentiality and Advocacy. Licensees obtain client consent prior to engaging in advocacy efforts on behalf of an identifiable client to improve the provision of services and to work toward removal of systemic barriers or obstacles that inhibit client access, growth, and development.

7. Multiple Clients

a. When a licensee agrees to provide counseling services to two or more persons who have a relationship, the licensee clarifies at the outset which person or persons are clients and the nature of the relationships the licensee will have with each involved person. If it becomes apparent that the licensee may be called upon to perform potentially conflicting roles, the licensee will clarify, adjust, or withdraw from roles appropriately.

8. Group Work

a. Screening. Licensees screen prospective group counseling/therapy participants. To the extent possible, licensees select members whose needs and goals are compatible with goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

b. Protecting Clients. In a group setting, licensees take reasonable precautions to protect clients from physical, emotional, or psychological trauma.

9. End-of-Life Care for Terminally Ill Clients

a. Quality of Care. Licensees strive to take measures that enable clients:

i. - iv. …

b. Licensee Competence, Choice, and Referral. Recognizing the personal, moral, and competence issues related to end-of-life decisions, licensees may choose to work or not work with terminally ill clients who wish to explore their end-of-life options. Licensees provide appropriate referral information to ensure that clients receive the necessary help.

c. Confidentiality. Licensees who provide services to terminally ill individuals who are considering hastening their own deaths have the option of breaking or not breaking confidentiality, depending on applicable laws and the specific circumstances of the situation and after seeking consultation or supervision from appropriate professional and legal parties.

10. Fees and Bartering

a. Accepting Fees from Agency Clients. Licensees refuse a private fee or other remuneration for rendering services to persons who are entitled to such services through the licensee's employing agency or institution. The policies of a particular agency may make explicit provisions for agency clients to receive counseling services from members of its staff in private practice. In such instances, the clients must be informed of other options open to them should they seek private counseling services.

b. Establishing Fees. In establishing fees for professional counseling services, licensees consider the financial status of clients and locality. In the event that the established fee structure is inappropriate for a client, licensees assist clients in attempting to find comparable services of acceptable cost.

c. Nonpayment of Fees. If licensees intend to use collection agencies or take legal measures to collect fees from clients who do not pay for services as agreed upon, they first inform clients of intended actions and offer clients the opportunity to make payment.

d. Bartering. Licensees may barter only if the relationship is not exploitive or harmful and does not place the licensee in an unfair advantage, if the client requests it, and if such arrangements are an accepted practice among professionals in the community. Licensees consider the cultural implications of bartering and discuss relevant concerns with clients and document such agreements in a clear written contract.

e. Receiving Gifts. Licensees understand the challenges of accepting gifts from clients and recognize that in some cultures, small gifts are a token of respect and showing gratitude. When determining whether or not to accept a gift from clients, licensees take into account the therapeutic relationship, the monetary value of the gift, a client's motivation for giving the gift, and the licensee's motivation for wanting or declining the gift.

11. Termination and Referral

a. Abandonment Prohibited. Licensees do not abandon or neglect clients in counseling and inform clients of professional limitations. Licensees assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

b. Inability to Assist Clients. If licensees determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships. Licensees are knowledgeable about culturally and clinically appropriate referral resources and suggest these alternatives. If clients decline the suggested referrals, licensees should discontinue the relationship.

c. Appropriate Termination. Licensees terminate a counseling relationship when it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued counseling. Licensees may terminate counseling when in jeopardy of harm by the client, or another person with whom the client has a relationship, or when clients do not pay fees as agreed upon. Licensees provide pretermination counseling and recommend other service providers when necessary.

d. Appropriate Transfer of Services. When licensees transfer or refer clients to other practitioners, they ensure that appropriate clinical and administrative processes are completed and open communication is maintained with both clients and practitioners.

12. Technology Applications

a. Benefits and Limitations. Licensees inform clients of the benefits and limitations of using information technology applications in the counseling process and in business/billing procedures. Such technologies include, but are not limited to:

i. - vi. …

b. Technology-Assisted Services. When providing technology-assisted distance counseling services, licensees determine that clients are intellectually, emotionally, and physically capable of using the application and that the application is appropriate for the needs of clients.

c. Inappropriate Services. When technology-assisted distance counseling services are deemed inappropriate by the licensee or client, licensees consider delivering services face-to-face.

d. Access. Licensees provide reasonable access to computer applications when providing technology-assisted distance counseling services.

e. Laws and Statutes. Licensees ensure that the use of technology does not violate the laws of any local, state, national, or international entity and observe all relevant statutes.

f. Assistance. Licensees seek business, legal, and technical assistance when using technology applications, particularly when the use of such applications crosses state or national boundaries.

g. Technology and Informed Consent. As part of the process of establishing informed consent, licensees do the following:

i. - v. …

vi. when the use of encryption is not possible, licensees notify clients of this fact and limit electronic transmissions to general communications that are not client specific;

vii. - viii. …

ix. inform clients of emergency procedures, such as calling 911 or a local crisis hotline, when the licensee is not available;

x. - xi. …

h. Sites on the World Wide Web. Licensees maintaining sites on the world wide web (the internet) do the following:

i. …

ii. establish ways clients can contact the licensee in case of technology failure;

iii. - viii. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:438 (March 1998), LR 29:142 (February 2003), LR 39:1792 (July 2013), LR: 41

§2105. Confidentiality, Privileged Communication, and Privacy

A. Licensees recognize that trust is a cornerstone of the counseling relationship. Licensees aspire to earn the trust of clients by creating an ongoing partnership, establishing and upholding appropriate boundaries, and maintaining confidentiality. Licensees communicate the parameters of confidentiality in a culturally competent manner.

1. Respecting Client Rights

a. Multicultural/Diversity Considerations. Licensees maintain awareness and sensitivity regarding cultural meanings of confidentiality and privacy. Licensees respect differing views toward disclosure of information. Licensees hold ongoing discussions with clients as to how, when, and with whom information is to be shared.

b. Respect for Privacy. Licensees shall respect their clients' right to privacy and avoid legal and unwarranted disclosures of confidential information.

c. Respect for Confidentiality. Licensees do not share confidential information without client consent. The right to privacy may be waived by the client or their legally recognized representative.

d. Explanation of Limitations. At initiation and throughout the counseling process, licensees inform clients of the limitations of confidentiality and seek to identify foreseeable situations in which confidentiality must be breached.

2. Exceptions

a. Danger and Legal Requirements. The general requirement that licensees shall keep information confidential does not apply when disclosure is required because a patient has communicated a threat of physical violence, which is deemed to be significant in the clinical judgment of the licensee, against a clearly identified victim or victims, coupled with the apparent intent and ability to carry out such threat, or when legal requirements otherwise demand that confidential information be revealed. Licensee shall consult with other professionals when in doubt as to the validity of an exception.

b. Contagious, Life-Threatening Diseases. When clients disclose that they have a disease commonly known to be both communicable and life threatening, licensees may be justified in disclosing information to identifiable third parties, if they are known to be at demonstrable and high risk of contracting the disease. Prior to making a disclosure, licensees confirm that there is such a diagnosis and assess the intent of clients to inform the third parties about their

disease or to engage in any behaviors that may be harmful to an identifiable third party.

c. Court-Ordered Disclosure. When subpoenaed to release confidential or privileged information without a client's permission, licensees obtain written, informed consent from the client or take steps to prohibit the disclosure or have it limited as narrowly as possible due to potential harm to the client or counseling relationship.

d. …

3. Information Shared with Others

a. Subordinates. Licensees make every effort to ensure that privacy and confidentiality of clients are maintained by subordinates, including employees, supervisees, students, clerical assistants, and volunteers.

b. …

c. Confidential Settings. Licensees discuss confidential information only in settings in which they can reasonably ensure client privacy.

d. Third-Party Payers. Licensees disclose information to third-party payers only when clients have authorized such disclosure.

e. Transmitting Confidential Information. Licensees take precautions to ensure the confidentiality of information transmitted through the use of:

i. - vii. …

f. Deceased Clients. Licensees protect the confidentiality of deceased clients, consistent with legal requirements and agency or setting policies.

4. Groups and Families

a. …

b. Couples and Family Counseling. In couples and family counseling, licensees clearly define who is considered "the client" and discuss expectations and limitations of confidentiality. Licensees seek agreement and document in writing such agreement among all involved parties having capacity to give consent concerning each individual's right to confidentiality and any obligation to preserve the confidentiality of information known.

5. Clients Lacking Capacity to Give Informed Consent

a. Responsibility to Clients. When counseling minor clients or adult clients who lack the capacity to give voluntary, informed consent, licensees protect the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards.

b. Responsibility to Parents and Legal Guardians. Licensees inform parents and legal guardians about the role of licensees and the confidential nature of the counseling relationship. Licensees are sensitive to the cultural diversity of families and respect the inherent rights and responsibilities of parents/guardians over the welfare of their children/charges according to law. Licensees work to establish, as appropriate, collaborative relationships with parents/guardians to best serve clients.

c. Release of Confidential Information. When counseling minor clients or adult clients who lack the capacity to give voluntary consent to release confidential information, licensees seek permission from an appropriate third party to disclose information. In such instances, licensees inform clients consistent with their level of understanding and take culturally appropriate measures to safeguard client confidentiality.

6. Records

a. Confidentiality of Records. Licensees ensure that records are kept in a secure location and that only authorized persons have access to records.

b. Permission to Record. Licensees obtain permission from clients prior to recording sessions through electronic or other means.

c. Permission to Observe. Licensees obtain permission from clients prior to observing counseling sessions, reviewing session transcripts, or viewing recordings of sessions with supervisors, faculty, peers, or others within the training environment.

d. Client Access. Licensees provide reasonable access to records and copies of records when requested by competent clients. Licensees limit the access of clients to their records, or portions of their records, only when there is compelling evidence that such access would cause harm to the client. Licensees document the request of clients and the rationale for withholding some or all of the record in the files of clients. In situations involving multiple clients, licensees provide individual clients with only those parts of records that related directly to them and do not include confidential information related to any other client.

e. Assistance with Records. When clients request access to their records, licensees provide assistance and consultation in interpreting counseling records.

f. Disclosure or Transfer. Unless exceptions to confidentiality exist, licensees obtain written permission from clients to disclose or transfer records to legitimate third parties. Steps are taken to ensure that receivers of counseling records are sensitive to their confidential nature.

g. Storage and Disposal after Termination. Licensees store records following termination of services to ensure reasonable future access, maintain records in accordance with state and federal statutes governing records, and dispose of client records and other sensitive materials in a manner that protects client confidentiality. When records are of an artistic nature, licensees obtain client (or guardian) consent with regards to handling of such records or documents.

h. Reasonable Precautions. Licensees take reasonable precautions to protect client confidentiality in the event of the licensee's termination of practice, incapacity, or death.

7. Research and Training

a. Institutional Approval. When institutional approval is required, licensees provide accurate information about their research proposals and obtain approval prior to conducting their research. They conduct research in accordance with the approved research protocol.

b. Adherence to Guidelines. Licensees are responsible for understanding and adhering to state, federal, agency, or institutional policies or applicable guidelines regarding confidentiality in their research practices.

c. …

d. Disclosure of Research Information. Licensees do not disclose confidential information that reasonably could lead to the identification of a research participant unless they have obtained the prior consent of the person. Use of data derived from counseling relationships for

purposes of training, research, or publication is confined to content that is disguised to ensure the anonymity of the individuals involved.

e. …

8. Consultation

a. Agreements. When acting as consultants, licensees seek agreements among all parties involved concerning each individual's rights to confidentiality, the obligation of each individual to preserve confidential information, and the limits of confidentiality of information shared by others.

b. …

c. Disclosure of Confidential Information. When consulting with colleagues, licensees do not disclose confidential information that reasonably could lead to the identification of a client or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided. They disclose information only to the extent necessary to achieve the purposes of the consultation.

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HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:623 (August 1989), amended LR 24:440 (March 1998), LR 29:144 (February 2003), LR 39:1796 (July 2013), LR 41:

§2107. Professional Responsibilities

A. Licensees aspire to open, honest, and accurate communication in dealing with the public and other professionals. They practice in a non-discriminatory manner within the boundaries of professional and personal competence and have a responsibility to abide by the code of conduct and standards of practice. Licensees actively participate in local, state, and national associations that foster the development and improvement of counseling. Licensees advocate to promote change at the individual, group, institutional, and societal levels that improves the quality of life for individuals and groups and remove potential barriers to the provision or access of appropriate services being offered. Licensees have a responsibility to the public to engage in counseling practices that are based on rigorous research methodologies. In addition, licensees engage in self-care activities to maintain and promote their emotional, physical, mental, and spiritual well-being to best meet their professional responsibilities.

1. Knowledge of Standards

a. Licensees have a responsibility to read, understand, and follow the code of conduct and standards of practice and adhere to applicable laws and regulations.

2. Professional Competence

a. Boundaries of Competence. Licensees practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Licensees gain knowledge, personal awareness, sensitivity, and skills pertinent to working with a diverse client population. All licensees must submit to the board a written statement of area(s) of intended practice along with supporting documentation of qualifications for the respective area(s) in which practice is intended.

b. New Specialty Areas of Practice. Licensees practice in specialty areas new to them only after appropriate education, training, and supervised experience. While developing skills in new specialty areas, licensees take steps to ensure the competence of their work and to protect others from possible harm. All licensees must submit to the board a written statement of new area(s) of intended practice along with supporting documentation of qualifications for the respective area(s) in which practice is intended before claiming said specialty area(s). At the discretion of the board an oral examination may be required before approval of specialty area(s).

c. Qualified for Employment. Licensees accept employment only for positions for which they are qualified by education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Licensees hire for professional counseling positions only individuals who are qualified and competent for those positions.

d. Monitor Effectiveness. Licensees continually monitor their effectiveness as professionals and take steps to improve when necessary. Licensees in private practice take reasonable steps to seek peer supervision as needed to evaluate their efficacy as licensees.

e. Consultation on Ethical Obligations. Licensees take reasonable steps to consult with other licensees or related professionals when they have questions regarding their ethical obligations or professional practice.

f. Continuing Education. Licensees recognize the need for continuing education to acquire and maintain a reasonable level of awareness of current scientific and professional information in their fields of activity. They take steps to maintain competence in the skills they use, are open to new procedures, and keep current with the diverse populations and specific populations with whom they work.

g. Impairment. Licensees are alert to the signs of impairment from their own physical, mental, or emotional problems and refrain from offering or providing professional services when such impairment is likely to harm a client or others. They seek assistance for problems that reach the level of professional impairment, and, if necessary, they limit, suspend, or terminate their professional responsibilities until such time it is determined that they may safely resume their work. Licensees assist colleagues or supervisors in recognizing their own professional impairment and provide consultation and assistance when warranted with colleagues or supervisors showing signs of impairment and intervene as appropriate to prevent imminent harm to clients.

h. Licensees Incapacitation or Termination of Practice. When licensees leave a practice, they follow a prepared plan for transfer of clients and files. Licensees prepare and disseminate to an identified colleague or "records custodian" a plan for the transfer of clients and files in the case of their incapacitation, death, or termination of practice (see §2105.A.6.h).

3. Advertising and Soliciting Clients

a. Accurate Advertising. When advertising or otherwise representing their services to the public, licensees identify their credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent.

b. Testimonials. Licensees who use testimonials do not solicit them from current clients nor former clients nor

any other persons who may be vulnerable to undue influence.

c. Statements by Others. Licensees make reasonable efforts to ensure that statements made by others about them or the profession of counseling are accurate.

d. Recruiting Through Employment. Licensees do not use their places of employment or institutional affiliation to recruit or gain clients, supervisees, or consultees for their private practices.

e. Products and Training Advertisements. Licensees who develop products related to their profession or conduct workshops or training events ensure that the advertisements concerning these products or events are accurate and disclose adequate information for consumers to make informed choices.

f. Promoting to Those Served. Licensees do not use counseling, teaching, training, or supervisory relationships to promote their products or training events in a manner that is deceptive or would exert undue influence on individuals who may be vulnerable. However, counselor educators may adopt textbooks they have authored for instructional purposes.

4. Professional Qualifications

a. Accurate Representation. Licensees claim or imply only professional qualifications actually completed and correct any known misrepresentations of their qualifications by others. Licensees truthfully represent the qualifications of their professional colleagues. Licensees clearly distinguish between paid and volunteer work experience and accurately describe their continuing education and specialized training.

b. Credentials. Licensees claim only licenses or certifications that are current and in good standing.

c. Educational Degrees. Licensees clearly differentiate between earned and honorary degrees.

d. Implying Doctoral-Level Competence. Licensees clearly state their highest earned degree in counseling or closely related field. Licensees do not imply doctoral-level competence when only possessing a master's degree in counseling or a related field by referring to themselves as "Dr." in a counseling context when their doctorate is not in counseling or related field. A doctoral degree in counseling or a closely related field is defined as a doctoral degree from a regionally accredited university that shall conform to one of the criteria below:

i. …

ii. a doctoral counseling program incorporating the word "counseling" or "counselor" in its title;

iii. a doctoral program incorporating a counseling-related term in its title (e.g., "marriage and family therapy"); or

iv. …

e. Program Accreditation Status. Licensees clearly state the accreditation status of their degree programs at the time the degree was earned.

f. Professional Membership. Licensees clearly differentiate between current, active memberships and former memberships in associations. Members of the American Counseling Association must clearly differentiate between professional membership, which implies the possession of at least a master's degree in counseling, and regular membership, which is open to individuals whose interests and activities are consistent with those of ACA but are not qualified for professional membership.

5. Nondiscrimination

a. Licensees do not condone or engage in discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law. Licensees do not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.

6. Public Responsibility

a. Sexual Harassment. Licensees do not engage in or condone sexual harassment.

Sexual Harassment—sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with professional activities or roles, and that either

(a). is unwelcome, is offensive, or creates a hostile workplace or learning environment, and licensees know or are told this; or

(b). …

b. Reports to Third Parties. Licensees are accurate, honest, and objective in reporting their professional activities and judgments to appropriate third parties, including courts, health insurance companies, those who are the recipients of evaluation reports, and others.

c. Media Presentations. When licensees provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, technology-based applications, printed articles, mailed material, or other media, they take reasonable precautions to ensure that:

i. - iii. …

d. Exploitation of Others. Licensees do not exploit others in their professional relationships.

e. Scientific Bases for Treatment Modalities. Licensees use techniques/procedures/modalities that are grounded in theory and/or have an empirical or scientific foundation. Licensees who do not must define the techniques/procedures as "unproven" or "developing" and explain the potential risks and ethical considerations of using such techniques/procedures and take steps to protect clients from possible harm.

7. Responsibility to Other Professionals

a. Personal Public Statements. When making personal statements in a public context, licensees clarify that they are speaking from their personal perspectives and that they are not speaking on behalf of all licensees or the profession.

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HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:624 (August 1989), amended LR 24:441 (March 1998), LR 26:496 (March 2000), LR 29:145 (February 2003), LR 39:1798 (July 2013), LR 41:

§2109. Relationships with Other Professionals

A. Professional licensees recognize that the quality of their interactions with colleagues can influence the quality of services provided to clients. They work to become knowledgeable about colleagues within and outside the field of counseling. Licensees develop positive working

relationships and systems of communication with colleagues to enhance services to clients.

1. Relationships with Colleagues, Employers, and Employees

a. Different Approaches. Licensees are respectful of approaches to counseling services that differ from their own. Licensees are respectful of traditions and practices of other professional groups with which they work.

b. Forming Relationships. Licensees work to develop and strengthen interdisciplinary relations with colleagues from other disciplines to best serve clients.

c. Interdisciplinary Teamwork. Licensees who are members of interdisciplinary teams delivering multifaceted services to clients keep the focus on how to best serve the clients. They participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the counseling profession and those of colleagues from other disciplines.

d. Confidentiality. When licensees are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, they clarify role expectations and the parameters of confidentiality with their colleagues.

e. Establishing Professional and Ethical Obligations. Licensees who are members of interdisciplinary teams clarify professional and ethical obligations of the team as a whole and of its individual members. When a team decision raises ethical concerns, licensees first attempt to resolve the concern within the team. If they cannot reach resolution among team members, licensees pursue other avenues to address their concerns consistent with client well-being.

f. Personnel Selection and Assignment. Licensees select competent staff and assign responsibilities compatible with their skills and experiences.

g. Employer Policies. The acceptance of employment in an agency or institution implies that licensees are in agreement with its general policies and principles. Licensees strive to reach agreement with employers as to acceptable standards of conduct that allow for changes in institutional policy conducive to the growth and development of clients.

h. Negative Conditions. Licensees alert their employers of inappropriate policies and practices. They attempt to effect changes in such policies or procedures through constructive action within the organization. When such policies are potentially disruptive or damaging to clients or may limit the effectiveness of services provided and change cannot be effected, licensees take appropriate further action. Such action may include referral to appropriate certification, accreditation, or state licensure organizations, or voluntary termination of employment.

i. Protection from Punitive Action. Licensees take care not to harass or dismiss an employee who has acted in a responsible and ethical manner to expose inappropriate employer policies or practices.

2. Consultation

a. Consultant Competency. Licensees take reasonable steps to ensure that they have the appropriate resources and competencies when providing consultation services. Licensees provide appropriate referral resources when requested or needed.

b. Understanding Consultees. When providing consultation, licensees attempt to develop with their consultees a clear understanding of problem definition, goals for change, and predicted consequences of interventions selected.

c. …

d. Informed Consent in Consultation. When providing consultation, licensees have an obligation to review, in writing and verbally, the rights and responsibilities of both licensees and consultees. Licensees use clear and understandable language to inform all parties involved about the purpose of the services to be provided, relevant costs, potential risks and benefits, and the limits of confidentiality. Working in conjunction with the consultee, licensees attempt to develop a clear definition of the problem, goals for change, and predicted consequences of interventions that are culturally responsive and appropriate to the needs of consultees.

e. Consultation with Medical Practitioners. In the event a client is diagnosed with a “serious mental illness”, licensees must consult and collaborate on an ongoing basis with a practitioner who is licensed by the Louisiana State Board of Medical Examiners and is authorized to prescribe medications in the management of psychiatric illness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:625 (August 1989), amended LR 24:443 (March 1998), LR 29:146 (February 2003), LR 39:1800 (July 2013), LR 41:

§2111. Evaluation, Appraisal, and Interpretation

A. General

1. Appraisal Techniques. The primary purpose of appraisal (henceforth known as "appraisal") is to provide measures that are objective and interpretable in either comparative or absolute terms. Licensees shall recognize the need to interpret the statements in this Section as applying to the whole range of appraisal techniques, including test and non-test data. Licensees shall recognize their legal parameters in utilizing formalized appraisal techniques and adhere to such.

2. Client Welfare. Licensees shall promote the welfare and best interests of the client in the development, publication and utilization of appraisal techniques. They shall not misuse appraisal results and interpretations and shall take reasonable steps to prevent others from misusing the information these techniques provide. They shall respect the client's right to know the result, the interpretations made, and the bases for their conclusions and recommendations.

B. Competence to Use and Interpret Tests

1. Limits of Competence. Licensees shall recognize the limits of their competence and perform only those testing and appraisal services for which they have been trained and is within R.S 37:1101-1122. They shall be familiar with reliability, validity, related standardization, error of measurement, and proper application of any technique utilized. Licensees using computer-based test interpretations shall be trained in the construction being measured and the specific instrument being used prior to using this type of computer application. Licensees shall take reasonable

measures to ensure the proper use of formalized appraisal techniques by persons under their supervision.

2. Appropriate Use. Licensees shall be responsible for the appropriate application, scoring, interpretation, and use of appraisal instruments, whether they score and interpret such tests themselves or use computerized or other services.

3. Decisions Based on Results. Licensees shall be responsible for decisions involving individuals or policies that are based on appraisal results have a thorough understanding of formalized measurement technique, including validation criteria, test research, and guidelines for test development and use.

4. Accurate Information. Licensees shall provide accurate information and avoid false claims or misconceptions when making statements about formalized appraisal instruments or techniques.

C. Informed Consent

1. Explanation to Clients. Prior to performing such, licensees shall explain the nature and purposes of a formal appraisal and the specific use of results in language the client (or other legally authorized person on behalf of the client) can understand, unless as explicit exception to this right has been agreed upon in advance. Regardless of whether scoring and interpretation are completed by licensees or by computer or other outside services, licensees shall take reasonable steps to ensure that appropriate explanations are given to the client.

2. Recipients of Results. The examinee's welfare, explicit understanding, and prior agreement shall determine the recipients of test results. Licensees shall include accurate and appropriate interpretations with any release of individual or group test results.

D. Release of Information to Competent Professionals

1. Misuse of Results. Licensees shall not misuse appraisal results, including test results, and interpretations, and shall take reasonable steps to prevent the misuse of such by others.

2. Release of Raw Data. Licensees shall ordinarily release data (e.g., protocols, counseling or interview notes, or questionnaires) in which the client is identified only with the consent of the client or the client's legal representative. Such data are usually released only to persons recognized by counselors as competent to interpret the data.

E. Test Selection

1. Appropriateness of Instruments. Licensees shall carefully consider the validity, reliability, psychometric limitations, and appropriateness of instruments when selecting tests for use in a given situation or with a particular client.

2. Culturally Diverse Populations. Licensees shall be cautious when selecting tests for culturally diverse populations to avoid inappropriateness of testing that may be outside of socialized behavioral or cognitive patterns.

F. Conditions of Test Administration

1. Administration Conditions. Licensees shall administer tests under the same conditions that were established in their standardization. When tests are not administered under standard conditions or when unusual behavior or irregularities occur during the testing session, those conditions shall be noted in interpretation, and the results may be designated as invalid or of questionable validity.

2. Computer Administration. Licensees shall be responsible for ensuring that administration programs function properly to provide clients with accurate results when a computer or other electronic methods are used for test administration.

3. Unsupervised Test-Taking. Licensees shall not permit unsupervised or inadequately supervised use of tests or appraisals unless the tests or appraisals are designed, intended, and validated for self-administration and/or scoring.

4. …

G. Diversity in Testing Licensees shall be cautious in using appraisal techniques, making evaluations, and interpreting the performance of populations not represented in the norm group on which an instrument was standardized. They shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, and socioeconomic status on test administration and interpretation and place test results in proper perspective with other relevant factors.

H. Test Scoring and Interpretation

1. Reporting Reservations. In reporting appraisal results, licensees shall indicate any reservations that exist regarding validity or reliability because of the circumstances of the appraisal or the inappropriateness of the norms for the person tested.

2. Research Instruments. Licensees shall exercise caution when interpreting the results of research instruments possessing insufficient technical data to support respondent results. The specific purposes for the use of such instruments shall be stated explicitly to the examinee.

3. Testing Services. Licensees who provide test scoring and test interpretation services to support the appraisal process shall confirm the validity of such interpretations. They shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use. The public offering of an automated test interpretations service is shall be considered a professional-to-professional consultation. The formal responsibility of the consultant shall be to the consultee, but the ultimate and overriding responsibility shall be to the client.

I. Test Security. Licensees shall maintain the integrity and security of tests and other appraisal techniques consistent with legal and contractual obligations. Licensees shall not appropriate, reproduce, or modify published tests or parts thereof without acknowledgment and permission from the publisher.

J. Obsolete Tests and Outdated Test Results. Licensees shall not use data or test results that are obsolete or outdated for the current purpose. Licensees shall make every effort to prevent the misuse of obsolete measures and test data by others.

K. Test Construction. Licensees shall use established scientific procedures, relevant standards, and current professional knowledge for test design in the development, publication, and utilization of appraisal techniques.

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HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of

Examiners, LR 15:625 (August 1989), amended LR 24:443 (March 1998), LR 29:147 (February 2003), LR 41:

§2113. Supervision, Training, and Teaching

A. Licensees aspire to foster meaningful and respectful professional relationships and to maintain appropriate boundaries with supervisees and students. Licensees have theoretical and pedagogical foundations for their work and aim to be fair, accurate, and honest in their assessments of counselors-in-training.

1. Provisional Licensed Professional Counselor Supervision and Client Welfare

a. Client Welfare. A primary obligation of counseling supervisors is to monitor the services provided by other licensees or counselors-in-training. Counseling supervisors monitor client welfare and supervisee clinical performance and professional development. To fulfill these obligations, supervisors meet regularly with supervisees to review case notes, samples of clinical work, or live observations. Supervisees have a responsibility to understand and follow the code of conduct and standards of practice.

b. Provisional Licensed Professional Counselor Credentials. Counseling supervisors work to ensure that clients are aware of the qualifications of the supervisees who render services to the clients.

c. …

2. Provisional Licensed Professional Counselor Supervision Competence

a. Supervisor Preparation. Prior to offering clinical supervision services, licensed professional counselors are trained in supervision methods and techniques. Licensed Professional Counselors who offer clinical supervision services regularly pursue continuing education activities including both counseling and supervision topics and skills.

2.b. - 3.b. …

e. Potentially Beneficial Relationships. Counseling supervisors are aware of the power differential in their relationships with supervisees. If they believe nonprofessional relationships with a supervisee may be potentially beneficial to the supervisee, they take precautions similar to those taken by licensees when working with clients. Examples of potentially beneficial interactions or relationships include attending a formal ceremony; hospital visits; providing support during a stressful event; or mutual membership in a professional association, organization, or community. Counseling supervisors engage in open discussions with supervisees when they consider entering into relationships with them outside of their roles as clinical and/or administrative supervisors. Before engaging in nonprofessional relationships, supervisors discuss with supervisees and document the rationale for such interactions, potential benefits or drawbacks, and anticipated consequences for the supervisee. Supervisors clarify the specific nature and limitations of the additional role(s) they will have with the supervisee.

4. - 4.b.…

c. Standards for Supervisees. Supervisors make their supervisees aware of professional and ethical standards and legal responsibilities. Supervisors of provisional licensed professional counselors encourage these supervisees to adhere to professional standards of practice.

4.d. - 5.b. …

c. Counseling for Supervisees. If supervisees request counseling, supervisors provide them with acceptable referrals. Supervisors do not provide counseling services to their supervisees. Supervisors address interpersonal competencies in terms of the impact of these issues on clients, the supervisory relationship, and professional functioning (see F.3.a).

5.d. - 7.b. …

8. Student Responsibilities

a. Standards for Students. Counselors-in-training have a responsibility to understand and follow the ACA code of ethics and Code of Conduct adopted by the LPC Board and adhere to applicable laws, regulatory policies, and rules and policies governing professional staff behavior at the agency or placement setting. Students have the same obligation to clients as those required of licensees.

b. …

9. Evaluation and Remediation of Students

a. Evaluation. Counselor educators clearly state to students, prior to and throughout the training program, the levels of competency expected, appraisal methods, and timing of evaluations for both didactic and clinical competencies. Counselor educators provide students with ongoing performance appraisal and evaluation feedback throughout the training program.

9.b. - 10.e. …

f. Potentially Beneficial Relationships. Counselor educators are aware of the power differential in the relationship between faculty and students. If they believe a nonprofessional relationship with a student may be potentially beneficial to the student, they take precautions similar to those taken by licensees when working with clients. Examples of potentially beneficial interactions or relationships include, but are not limited to, attending a formal ceremony; hospital visits; providing support during a stressful event; or mutual membership in a professional association, organization, or community. Counselor educators engage in open discussions with students when they consider entering into relationships with students outside of their roles as teachers and supervisors. They discuss with students the rationale for such interactions, the potential benefits and drawbacks, and the anticipated consequences for the student. Educators clarify the specific nature and limitations of the additional role(s) they will have with the student prior to engaging in a nonprofessional relationship. Nonprofessional relationships with students should be time-limited and initiated with student consent.

11. - 11.c.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:445 (March 1998), LR 29:149 (February 2003), LR 39:1800 (July 2013), LR 41:

§2115. Research and Publication

A. Licensees who conduct research are encouraged to contribute to the knowledge base of the profession and promote a clearer understanding of the conditions that lead to a healthy and more just society. Licensees support efforts of researchers by participating fully and willingly whenever possible. Licensees minimize bias and respect diversity in designing and implementing research programs.

1. Research Responsibilities

a. Use of Human Research Participants. Licensees plan, design, conduct, and report research in a manner that is consistent with pertinent ethical principles, federal and state laws, host institutional regulations, and scientific standards governing research with human research participants.

b. Deviation from Standard Practice. Licensees seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard or acceptable practices.

c. …

d. Precautions to Avoid Injury. Licensees who conduct research with human participants are responsible for the welfare of participants throughout the research process and should take reasonable precautions to avoid causing injurious psychological, emotional, physical, or social effects to participants.

e. …

f. Minimal Interference. Licensees take reasonable precautions to avoid causing disruptions in the lives of research participants that could be caused by their involvement in research.

g. Multicultural/Diversity Considerations in Research. When appropriate to research goals, licensees are sensitive to incorporating research procedures that take into account cultural considerations. They seek consultation when appropriate.

2. Rights of Research Participants

a. Informed Consent in Research. Individuals have the right to consent to become research participants. In seeking consent, licensees use language that:

i. - ix. …

b. Deception. Licensees do not conduct research involving deception unless alternative procedures are not feasible and the prospective value of the research justifies the deception. If such deception has the potential to cause physical or emotional harm to research participants, the research is not conducted, regardless of prospective value. When the methodological requirements of a study necessitate concealment or deception, the investigator explains the reasons for this action as soon as possible during the debriefing.

c. …

d. Client Participation. Licensees conducting research involving clients make clear in the informed consent process that clients are free to choose whether or not to participate in research activities. Licensees take necessary precautions to protect clients from adverse consequences of declining or withdrawing from participation.

e. …

f. Persons Not Capable of Giving Informed Consent. When a person is not capable of giving informed consent, licensees provide an appropriate explanation to, obtain agreement for participation from, and obtain the appropriate consent of a legally authorized person.

g. Commitments to Participants. Licensees take reasonable measures to honor all commitments to research participants.

h. Explanations after Data Collection. After data are collected, licensees provide participants with full clarification of the nature of the study to remove any misconceptions participants might have regarding the research. Where scientific or human values justify delaying or withholding information, licensees take reasonable measures to avoid causing harm.

i. Informing Sponsors. Licensees inform sponsors, institutions, and publication channels regarding research procedures and outcomes. Licensees ensure that appropriate bodies and authorities are given pertinent information and acknowledgement.

j. Disposal of Research Documents and Records. Within a reasonable period of time following the completion of a research project or study, licensees take steps to destroy records or documents (audio, video, digital, and written) containing confidential data or information that identifies research participants. When records are of an artistic nature, researchers obtain participant consent with regard to handling of such records or documents.

3. - 3.d. …

4. Reporting Results

a. Accurate Results. Licensees plan, conduct, and report research accurately. They provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees do not engage in misleading or fraudulent research, distort data, misrepresent data, or deliberately bias their results. They explicitly mention all variables and conditions known to the investigator that may have affected the outcome of a study or the interpretation of data. They describe the extent to which results are applicable for diverse populations.

b. Obligation to Report Unfavorable Results. Licensees report the results of any research of professional value. Results that reflect unfavorably on institutions, programs, services, prevailing opinions, or vested interests are not withheld.

c. Reporting Errors. If licensees discover significant errors in their published research, they take reasonable steps to correct such errors in a correction erratum, or through other appropriate publication means.

d. Identity of Participants. Licensees who supply data, aid in the research of another person, report research results, or make original data available take due care to disguise the identity of respective participants in the absence of specific authorization from the participants to do otherwise. In situations where participants self-identify their involvement in research studies, researchers take active steps to ensure that data are adapted/changed to protect the identity and welfare of all parties and that discussion of results does not cause harm to participants.

e. Replication Studies. Licensees are obligated to make available sufficient original research data to qualified professionals who may wish to replicate the study.

5. Publication

a. Recognizing Contributions. When conducting and reporting research, licensees are familiar with and give recognition to previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

b. Plagiarism. Licensees do not plagiarize, that is, they do not present another person's work as their own work.

c. Review/Republication of Data or Ideas. Licensees fully acknowledge and make editorial reviewers aware of prior publication of ideas or data where such ideas or data are submitted for review or publication.

d. Contributors. Licensees give credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor is listed first and minor technical or professional contributions are acknowledged in notes or introductory statements.

e. Agreement of Contributors. Licensees who conduct joint research with colleagues or students/supervisees establish agreements in advance regarding allocation of tasks, publication credit, and types of acknowledgement that will be received.

f. …

g. Duplicate Submission. Licensees submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in another journal or published work are not submitted for publication without acknowledgment and permission from the previous publication.

h. Professional Review. Licensees who review material submitted for publication, research, or other scholarly purposes respect the confidentiality and proprietary rights of those who submitted it. Licensees use care to make publication decisions based on valid and defensible standards. Licensees review article submissions in a timely manner and based on their scope and competency in research methodologies. Licensees who serve as reviewers at the request of editors or publishers make every effort to only review materials that are within their scope of competency and use care to avoid personal biases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:446 (March 1998), LR 29:150 (February 2003), 39:1803 (July 2013), LR 41:

§2117. Resolving Ethical Issues

A. Licensees behave in a legal, ethical, and moral manner in the conduct of their professional work. They are aware that client protection and trust in the profession depend on a high level of professional conduct. They hold other licensees to the same standards and are willing to take appropriate action to ensure that these standards are upheld. Licensees strive to resolve ethical dilemmas with direct and open communication among all parties involved and seek consultation with colleagues and supervisors when necessary. Licensees incorporate ethical practice into their daily professional work. They engage in ongoing professional development regarding current topics in ethical and legal issues in counseling.

1. Standards and the Law

a. Knowledge. Licensees understand the ACA code of conduct and other applicable ethics codes from other professional organizations or from certification and licensure bodies of which they are members. Lack of knowledge or misunderstanding of an ethical responsibility is not a defense against a charge of unethical conduct.

b. Conflicts between Ethics and Laws. If ethical responsibilities conflict with law, regulations, or other governing legal authority, licensees make known their commitment to the code of conduct and standards of practice and take steps to resolve the conflict. If the conflict cannot be resolved by such means, licensees may adhere to the requirements of law, regulations, or other governing legal authority.

2. Suspected Violations

a. Ethical Behavior Expected. Licensees expect colleagues to adhere to the code of conduct and standards of practice. When licensees possess knowledge that raises doubts as to whether another licensee is acting in an ethical manner, they take appropriate action.

b. Informal Resolution. When licensees have reason to believe that another licensee is violating or has violated an ethical standard, they attempt first to resolve the issue informally with the other licensee, if feasible, provided such action does not violate confidentiality rights that may be involved.

c. Reporting Ethical Violations. If an apparent violation has substantially harmed, or is likely to substantially harm a person or organization and is not appropriate for informal resolution or is not resolved properly, licensees take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, voluntary national certification bodies, state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when licensees have been retained to review the work of another licensee whose professional conduct is in question.

d. Consultation. When uncertain as to whether a particular situation or course of action may be in violation of the code of conduct, licensees consult with other licensees who are knowledgeable about ethics and the code of conduct, with colleagues, or with appropriate authorities

e. Organizational Conflicts. If the demands of an organization with which licensees are affiliated pose a conflict with the code of conduct, licensees specify the nature of such conflicts and express to their supervisors or other responsible officials their commitment to the code of conduct. When possible, licensees work toward change within the organization to allow full adherence to the Code of Conduct of Ethics. In doing so, they address any confidentiality issues.

f. Unwarranted Complaints. Licensees do not initiate, participate in, or encourage the filing of ethics complaints that are made with reckless disregard or willful ignorance of facts that would disprove the allegation.

g. Unfair Discrimination Against Complainants and Respondents. Licensees do not deny persons employment, advancement, admission to academic or other programs, tenure, or promotion based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

3. Cooperation with Ethics Committees

a. Licensees assist in the process of enforcing the code of conduct. Licensees cooperate with investigations, proceedings, and requirements of the LPC Board disciplinary committee. Licensees are familiar with the code of conduct as established by the LPC Board and the professional and occupational standards and procedures for processing complaints of ethical violations as it pertains to

the enforcement of the code of conduct and standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:447 (March 1998), LR 29:151 (February 2003), LR 39:1805 (July 2013), LR 41:

§2118. Appendix—Declaration of Practices and Procedures for Licensed Professional Counselors and Provisional Licensed Professional Counselors

A. The following comprises the information that must be available in writing for each client seen by a licensed professional counselor or provisional licensed professional counselor in the state of Louisiana. Licensed professional counselors or provisional licensed professional counselors must read and incorporate the Code of Conduct for Professional Counselors in their declaration statement.

1. Licensed professional counselor or provisional licensed professional counselor's name, mailing address, and telephone number.

2. Qualifications

a. …

b. Give your license number, specifying the LPC Board of Examiners including address and telephone number as the grantor of your license or provisional license.

c. An individual under supervision must refer to him/herself as a provisional licensed professional counselor and include the name and address of his/her board-approved supervisor.

3. - 9. …

10. Client Responsibilities. List client responsibilities, e.g., clients are expected to follow office procedures for keeping appointments, clients must pay for services at the time of each visit, and clients must terminate the counseling relationship before being seen by another mental health professional and/or notify the licensee of any other ongoing professional mental health relationship. If a client is seeing another mental health professional (psychologist, board certified social worker, etc.), then permission must be granted by the first therapist for the second to work with the same client. (See Code of Conduct).

11. …

12. Potential Counseling Risks. Indicate that as a result of mental health counseling, the client may realize that he/she has additional issues which may not have surfaced prior to the onset of the counseling relationship. The licensee may also indicate possible risk within specific specialty areas (i.e., marriage and family: as one partner changes, additional strain may be placed on the martial relationship if the other partner refuses to work).

13. It is also required that a place be provided for the date and signatures of the licensee, the client(s) and, if warranted, the date and signatures of the parent/guardian and the licensee's supervisor. A general statement is required indicating that the client has read, understands, and agrees to the conditions set forth by the declaration statement. Minor clients must have an accompanying parent/guardian signature which provides consent for their treatment.

B. To practice mental health counseling in Louisiana the licensed professional counselor or provisional licensed professional counselor must have a current copy of his/her declaration statement on file in the LPC Board office. The provisional licensed professional counselor must include a copy of his/her declaration statement with each application for or change in supervision. The Code of Conduct can be duplicated for clients and additional copies are available from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:627 (August 1989), amended LR 20:544 (May 1994), LR 29:152 (February 2003), LR 39:1806 (July 2013), LR 41:

Chapter 23. Licensed Professional Counselor, Licensed Marriage and Family Therapist, Provisional Licensed Professional Counselor, Provisional Licensed Marriage and Family Therapist Professional Assistance Program

§2301. Authority

A. The Louisiana Licensed Professional Counselors Board of Examiners recognizes that impairments in the functioning of persons licensed or provisionally licensed, to practice as licensed professional counselors, provisional licensed professional counselors, licensed marriage and family therapists, or provisional licensed marriage and family therapists can affect the competent delivery of mental health counseling and marriage and family therapy, and impair professional judgment.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:344 (January 2011), LR 41:

§2303. Purpose and Scope; Immunity

A. The goal of the professional assistance program is to provide for public protection through monitoring and a remedial course of action applicable to licensed and provisional licensed professional counselors and to licensed and provisional licensed marriage and family therapists who are functionally impaired in their ability to safely practice. Impairments include, but are not limited to mental, physical, and addictive disorders or other conditions. The program also supports recovery through preventative measures and allows entrance into the program before harm occurs.

B. A licensed or provisional licensed professional counselor or licensed or provisional licensed marriage and family therapist may enter the program subsequent to voluntary disclosure of impairment via an initial or renewal application for a license or provisional license. When evidence of impairment arises as a possible causative or contributing factor in disciplinary proceedings, the board may offer this program to the subject of those proceedings. If the subject agrees to enter the program, disciplinary proceedings may be suspended pending program completion. If the subject refuses to enter the program, the disciplinary process shall continue. Participation in the

program can be voluntary, but may also be required as a prerequisite to continued mental health counseling practice or marriage and family therapy in accordance with the conditions of any consent order, compliance or adjudication hearing. A licensed or provisional licensed professional counselor or licensed or provisional licensed marriage and family therapist who enters the program may be allowed to maintain his/her license or provisional license while in compliance with the requirements of their program, subject to the board's discretion.

C. Professionals who participate in evaluation, monitoring or treatment and who are approved or designated by the board to render these services, as well as professional assistance program committee members and board members, who participate in professional assistance program activities, will be provided immunity. The participating licensed or provisional licensed professional counselor or licensed or provisional licensed marriage and family therapist will be responsible for executing all required releases of information and authorizations required for the board or its designees to obtain information from any monitor, treatment or service provider concerning the licensed or provisional licensed professional counselor or licensed or provisional licensed marriage family therapist's progress and participation in the program, the professional assistance program participant must agree in writing, to grant full immunity to, and hold harmless from any suit or claim, all professional assistance program committee members, board members and those professionals who assist in their evaluation, monitoring, or treatment. This grant of immunity shall extend to all actions by such board members, professional assistance program committee members, or participating professionals acting in good faith in the discharge of their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:344 (January 2011), LR 41:

§2305. Program Implementation

A. - A.1.c. …

2. The participant may be required to submit to ongoing monitoring for a period of up to five years. The beginning date of the monitoring period will be the date upon which a consent order is formally signed by the licensed or provisional licensed professional counselor or licensed or provisional licensed marriage and family therapist and the board, or the date of the board's official decision to require program participation in the event of an adjudication hearing.

3. During the monitoring period the licensed or provisional licensed professional counselor or licensed or provisional licensed marriage and family therapist may be required to submit to random drug and/or alcohol screenings as determined appropriate by the board, or other monitoring requirements which are pertinent and relative to the documented impairment.

a. - b. …

4. Receipt by the board of any positive, unexplained substance abuse/drug screen or reports of non-compliance or complications relative to the impairment during the monitoring period may result in suspension, revocation, or other appropriate action pertaining to the licensed or provisional licensed professional counselor, licensed or provisional licensed marriage and family therapist's license or provisional license as determined appropriate by the board.

5. When the impairment is substance-related, the participant may be required to attend Twelve Step meetings on a regular basis as determined appropriate by the designated licensed substance abuse professional, and as approved or required by the board, but no less than four times monthly.

a. A pre-approved monthly log must be submitted to and received by the board at least five days after the final business day of the month following completion of the required meetings. It is the participant's responsibility to ensure that these logs are properly completed and received by the board by the designated date.

b. - c. …

6. During the monitoring period for the participant, the participant may be required to participate in professional supervision with a board-approved and designated licensed professional counselor supervisor or licensed marriage and family therapist supervisor at a frequency determined by the board for a period of time up to and including the entire five year period of monitoring.

7. The board, in addition to other conditions, may require that the participant obtain regularly scheduled therapy, at a prescribed interval.

a. - b. …

c. The participant may choose the licensed substance abuse professional or other qualified professional to provide this therapy, subject to board approval.

8. Other requirements for participation in the program may include, but are not limited to, limitations in the scope of the participant's mental health counseling or marriage and family therapy practice, suspension of practice, or voluntary withdrawal from practice for a specific time.

9. In the event that the participant relocates to another jurisdiction, the participant will within five days of relocating be required to either enroll in the other jurisdiction's professional assistance program and have the reports required under the agreement sent to the Louisiana Professional Counselor's Board of Examiners or if the other jurisdiction has no impairment professional program, the participant will notify the licensing board of that jurisdiction that the participant is impaired and enrolled in the professional assistance program. Should the participant fail to adhere to this requirement, in addition to being deemed in violation of the program requirements and corresponding consent order or adjudication, the participant's license or provisional license will be suspended or revoked.

10. The participant shall notify the board office by telephone within 48 hours and in writing within five working days of any changes of the participant's home or work address, telephone number, employment status, employer and/or change in scope or nature practice. The participant may satisfy the notice requirement by telephone, leaving a voice message on the board's office voicemail at times when the office is closed. A written confirmation from the participant of the phone message is expected within five working days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:345 (January 2011), LR 41:

§2307. Violations

A. Notification of a violation of the terms or conditions of this agreement, consent order or adjudication order may result in the immediate suspension of the participant's license or provisional license to practice in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:346 (January 2011), LR 41:

§2309. Costs and Fees

A. The participant shall be responsible for all fees and costs incurred in complying with the terms of this agreement, including but not limited to therapy, assessments, supervision, drug/alcohol screens, and reproduction of treatment or other records. By agreeing to participate in the professional assistance program, the participant agrees to be solely responsible for all such costs or expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:346 (January 2011), LR 41:

§2311. Acceptance of Terms; Program Agreement

A. The participant must submit to the board a notarized agreement indicating acceptance of the required conditions of participation in the professional assistance program as mandated by the board, along with all initial (or updated) releases or authorizations for the board or its designees to obtain information concerning the participant's participation and progress in the program. Such agreement shall also delineate requirements for release from the program, including but not limited to certification of completion by treatment providers, written evidence of full compliance with the program agreement, and two written reports attesting to the participant's current mental status to be submitted by mental health professionals approved by the board. The program agreement shall also state that the board may monitor the participant for up to two years following program completion. This agreement and the required release and authorizations must be submitted prior to the issuance of any initial license or provisional license or re-issuance of a renewal of a license or provisional license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:346 (January 2011), LR 41:

§2313. Confidentiality

A. The board will, to the full extent permissible, under R.S. 44:4 et seq., maintain an agreement or consent order relating to the participant's participation in the professional assistance program as a confidential matter. The board retains the discretion to share information it deems necessary with those persons providing evaluation/assessment, therapy, treatment, supervision, monitoring or drug/alcohol testing or reports. Violation of any terms, conditions, or requirements contained in any consent order, or board decision can result in a loss of the participant's license or provisional license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:346 (January 2011), LR 41:

§2315. Recusal

A. Any board members or professional assistance program committee members who participate in any manner in any particular professional assistance program case shall recuse themselves from voting in any subsequent application or disciplinary matter involving the licensed or provisional licensed professional counselor or licensed or provisional licensed marriage and family therapist who is the subject of such professional assistance program case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1110 and 37: 1120.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:347 (January 2011), LR 41:

Subpart 2. Professional Standards for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists

Chapter 27. General Provisions

§2703. Statutory Authority of the Marriage and Family Therapy Advisory Committee

A. The Marriage and Family Therapy Advisory Committee was created and empowered by Act 1195 of the 2001 Legislature to provide for the regulation of the use of the title "Licensed Marriage and Family Therapist" (R.S. 37:1101-1122). Therefore, the Louisiana Licensed Professional Counselors Board of Examiners, hereafter referred to as the board, establishes the Marriage and Family Therapy Advisory Committee as directed by the 2001 Legislature. Act 484 of the 2014 Legislative Session empowered the board to provide regulation of the practice and use of the titles "Provisional Licensed Professional Counselor" and "Provisional Licensed Marriage and Family Therapist". The Marriage and Family Therapy Advisory Committee shall develop the rules and regulations herein pursuant to the authority granted to, and imposed upon, said advisory committee under the provisions of the Louisiana Revised Statutes, Title 37, Chapter 13, §1101-1123. The Health and Welfare Committees in the House and Senate shall jointly approve these rules and regulations. The board shall promulgate these rules and regulations [R.S. 37: 1104(B)(2)(b)]. The board shall approve, revoke, suspend, and renew the license of applicants for licensure as licensed marriage and family therapists and the provisional license of applications for provisional licensure as provisional licensed marriage and family therapists upon recommendation of the Marriage and Family Therapy Advisory Committee [R.S. 37:1105(G)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:153 (February 2003), LR 41:

§2705. Description of Organization

A. The Marriage and Family Therapy Advisory Committee, hereafter referred to as the advisory committee, consists of four members, who shall be residents of the state of Louisiana. All candidates and advisory committee members shall be licensed marriage and family therapists.

The four advisory committee members shall be members of the board.

B. - C. …

D. Any vacancy occurring in advisory committee membership, other than by expiration of term, shall be filled for the remainder of the unexpired term by the governor within 30 days from a list of qualified candidates supplied by the LAMFT board as prescribed in Section 1104 of R.S. 37:1101-1123.

E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:153 (February 2003), amended LR 29:2783 (December 2003), LR 41:

§2709. Notification of Change

A. Licensed marriage and family therapists, provisional licensed marriage and family therapists, and LMFT-approved supervisors/supervisors-in-training shall notify the Licensed Professional Counselors Board of Examiners in writing of any and all changes in name, address, and phone number within 30 days. Failure to do so will result in a fine as set forth in §901.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:153 (February 2003), LR 41:

Chapter 29. Advisory Committee Meetings, Procedures, Records, Powers and Duties

§2905. Quorum

A. Three members of the advisory committee shall constitute a quorum at any meeting or hearing for the transaction of business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 29:154 (February 2003), LR 41:

§2907. Procedures

A. …

B. The advisory committee shall review applications for examination, licensure, provisional licensure, and renewal for recommended approval to the board. The advisory committee shall recommend to the board to withhold, deny, revoke, or suspend any license or provisional license of an applicant, or impose any other sanctions on licensed or provisional licensed marriage and family therapists.

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 29:154 (February 2003), LR 41:

§2911. Records

A. The advisory committee shall maintain records of pertinent matters relating to application, licensure, and discipline. Registers of LMFT-approved supervisors and LMFT-registered supervisor candidates and a register of licensed and provisional licensed marriage and family therapists shall be made available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 29:154 (February 2003), amended LR 29:2784 (December 2003), LR 41:

Chapter 31. License of Title for Marriage and Family Therapy

§3101. License of Title for Marriage and Family Therapy

A. …

B. As stated in R.S. 37:1122(A), no person, unless he/she holds a provisional license as a provisional licensed marriage and family therapist, shall advertise as being a "provisional licensed marriage and family therapist" or hold themselves out to the public or make use of any title, words, letters or abbreviations that may reasonably be confused with the title "provisional licensed marriage and family therapist."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:154 (February 2003), LR 41:

§3103. Practice of Marriage and Family Therapy by Other Licensed Mental Health Professionals

A. Nothing in this subpart shall be construed as prohibiting qualified members of other professional groups including but not limited to clinical social workers, psychiatric nurses, psychologists, physicians, licensed professional counselors, or members of the clergy, including Christian science practitioners, from doing or advertising that they perform work of a marriage and family therapy nature consistent with the accepted standards of their respective professions. No such person, however, shall use the title, or use any words or abbreviations that may reasonably be confused with the title, "Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist".

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:154 (February 2003), LR 41:

§3105. Definitions for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists

Active Supervision—the process by which a supervisee receives one hour of face-to-face supervision with his/her board-approved supervisor for every 20 hours of direct client contact or at least once every three-month period.

* * *

Licensee—an individual holding either a full or provisional license issued by the Louisiana Licensed Professional Counselors Board of Examiners. All licensees must accurately identify themselves as fully licensed (i.e., licensed) or provisionally licensed.

* * *

Provisional Licensed Marriage and Family Therapist—any person by title or description of services incorporating the words "provisional licensed marriage and family therapist" and who, under board-approved supervision (i.e. may not practice independently), renders marriage and family therapy denoting a client-therapist relationship in which the licensee assumes the responsibility for knowledge,

skill, and ethical consideration needed to assist individuals, groups, organizations, or the general public, and who implies that he/she is provisionally licensed to practice marriage and family therapy.

* * *

Supervisee—a provisional licensed marriage and family therapist under the active supervision of his/her board-approved supervisor or board-approved supervisor candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:154 (February 2003), amended LR 29:2784 (December 2003), LR 41:

Chapter 33. Requirements for Licensure and Provisional Licensure

§3301. General Provisions

A. The board upon recommendation of the marriage and family therapy advisory committee shall license or provisionally license to practice all persons who present satisfactory evidence of qualifications as specified in these rules and regulations of the advisory committee. Such licensure shall be signed by the chairman and vice chairman of the board and the chairman and vice chairman of the advisory committee. No license or provisional license shall be denied any applicant based upon the applicant's race, religion, creed, national origin, sex, or physical impairment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:155 (February 2003), LR 41:

§3303. Definitions

Applicant—any individual seeking licensure or provisional licensure who has submitted an official application and paid the application fee.

* * *

Direct Client Contact—face-to-face (therapist and client) therapy with individuals, couples, families, and/or groups from a relational perspective. Activities such as telephone contact, case planning, observation of therapy, record keeping, travel, administrative activities, consultation with community members or professionals, or supervision, are not considered direct client contact. Assessments done face-to-face and more than clerical in nature and focus may be counted as direct client contact. Psychoeducation may be counted as direct client contact.

Supervision—the professional relationship between a supervisor and supervisee that promotes the development of responsibility, skill, knowledge, and ethical standards in the practice of marriage and family therapy. In addition to monitoring the student's supervised face-to-face therapy with individuals, couples, families, and/or groups from a systemic/relational perspective, the supervisor provides regular, face-to-face guidance and instruction. *Supervision* may include, without being limited to, the review of case presentations, audiotapes, videotapes, and direct observation. *Supervision* will be distinguishable from psychotherapy and teaching.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:155 (February 2003), amended LR 29:2784 (December 2003), LR 35:1113 (June 2009), LR 37:1601 (June 2011), repromulgated LR 37:2162 (July 2011), LR 41:

§3305. General Licensing Requirements

A. Each person desiring to obtain a license or provisional license as a practicing marriage and family therapist shall make application to the board upon such forms and completed in such manner as the board prescribes, accompanied by such fee prescribed. An applicant shall furnish evidence satisfactory to the board and the advisory committee that such person:

1. …

2. is not engaged or has not engaged in any practice or conduct that would be grounds for refusing to issue a license or provisional license;

3. is qualified for licensure or provisional licensure pursuant to the requirements provided for in this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:155 (February 2003), amended LR 37:1601 (June 2011), repromulgated LR 37:2163 (July 2011), LR 41:

§3309. Academic Requirements for MFT Licensure or Provisional Licensure

A. - B. …

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), LR 35:1113 (June 2009), LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1965 (August 2012), LR 41:

§3311. Coursework and Academic Supervision Requirements, for Options 2, 3, and 4

A. - A.8. …

9. Up to 220 of the required 500 hours of supervised direct client contact and 44 of the required 100 hours of face-to-face supervision not completed during a practicum and/or internship during the completion of the qualifying degree program or postgraduate training institute may be completed once an applicant is provisionally licensed as a provisional licensed marriage and family therapist and is under the supervision of a LMFT board approved supervisor. These hours shall be added to the required 2000 hours of supervised direct client contact required for licensure.

B. - B.2. …

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1966 (August 2012), LR 41:

§3315. Application, Practice, and Renewal Requirements for Provisional Licensed Marriage and Family Therapists

A. General Provisions

1. Pursuant to Act 484 of the 2014 Regular Legislative Session and effective May 1, 2015, an individual previously registered as a MFT intern with the Louisiana Licensed Professional Counselors Board of Examiners and under

active board-approved supervision will be issued a provisional license as a provisional licensed marriage and family therapists and subject to R.S. 37:1101-1123 and board rules herein.

2. Any MFT intern who has surpassed their seven-year registration period, with the exception of those granted an extension by the board, must reapply to the board as a provisional licensed marriage and family therapist under current law and board rules in order to practice marriage and family therapy.

3. MFT interns granted an extension beyond May 1st, 2015 will be issued a provisional license. Such provisional license will become invalid upon expiration of the board granted extension. The individual must then apply under current law and board rules for provisional licensure as a provisional licensed marriage and family therapist or for licensure as a licensed marriage and family therapist in order to practice marriage and family therapy.

4. Persons who apply to the board for qualification as a provisional licensed marriage and family therapist must meet the specified degree requirements and must successfully complete a minimum of two years of post-graduate clinical experience in marriage and family therapy as specified in Section 3315.C.1 under qualified supervision as determined by the advisory committee and approved by the board. Upon qualification, the provisional licensed marriage and family therapist shall be considered an applicant in process for licensure as a LMFT.

5. A member of the advisory committee who has functioned as a board-approved supervisor for a person making application for licensure as a LMFT or certification as a board-approved supervisor shall not participate in deliberations in regard to or vote on the approval of said applicant.

6. A provisional licensed marriage and family therapist must provide updates to the board and board-approved supervisor regarding changes in status on forms provided by the board within 30 days of said change. Failure to comply may result in a fine, loss of supervised experience hours, and/or disciplinary action. Changes in status include changes in:

a. relevant personal information, including contact information, physical address, name;

b. relevant practice setting information, including job title/duties, employment status;

c. status with the justice system, including notification of arrest, charges, convictions,

d. status with another licensure/credentialing body, including notification of suspension, revocation, or other disciplinary proceedings/actions.

e. the use of any narcotics, controlled substances, or any alcoholic beverages in a manner that is dangerous to the public or in a manner that impairs the supervisee's ability to provide mental health services to the public.

f. any medical condition which may in any way impair or limit the supervisee's ability to provide mental health services to the public with reasonable skill or safety.

7. The supervisee must maintain documentation of all supervised experience hours by employment location and type of hour (indirect, direct, and face to face supervision). It is recommended that a supervisee obtain the signature of the board-approved supervisor indicating review and approval of documentation at regular intervals.

B. Definitions for Supervision

Consultation—a voluntary relationship between professionals of relatively equal expertise or status wherein the person being consulted offers advice or information on an individual case or problem for use by the person asking for assistance. The consultant has no functional authority or legal or professional responsibility for the consultee, the services performed by the consultee, or the welfare of the consultee's client. Consultation is not supervision. Experience under contract for consultation will not be credited toward fulfillment of supervision requirements of provisional licensed marriage and family therapists or supervisor candidates.

Co-Therapy Supervision—qualified supervision that takes place during a therapy session in which the LMFT board-approved supervisor acts as a co-therapist with the provisional licensed marriage and family therapist.

Direct Work Experience—psychotherapeutic services delivered face-to-face to individuals, couples, families, or groups in a setting and in a manner approved by the advisory committee as part of the supervisee's plan of supervision.

Group Supervision—qualified supervision of more than two and no more than six provisional licensed marriage and family therapists with one or more board-approved supervisors. Group supervision provides the opportunity for the supervisee to interact with other supervisees and offers a different learning experience than that obtained from individual supervision.

* * *

Live Supervision—individual and/or group supervision in which the supervisor directly observes the case while the therapy is being conducted and has the opportunity to provide supervisory input during the session. When a supervisor conducts live supervision the time is counted as individual supervision for up to two provisional licensed marriage and family therapists providing therapy in the room with the client(s) and for up to two provisional licensed marriage and family therapists observing the therapy and interacting with the supervisor. The time is counted as group supervision when more than two provisional licensed marriage and family therapists involved in direct client contact or more than two observers interacting with the supervisor are present, providing that there are no more than six provisional licensed marriage and family therapists involved.

LMFT Board-Approved Supervisor—an individual who has made formal application for certification as an *LMFT board-approved supervisor* documenting that he or she has satisfactorily met the standards specified in the Rule for *LMFT board-approved supervisors* as determined by the advisory committee and has received a letter from the board certifying them as such. Under no circumstances may an *LMFT board-approved supervisor* be related to by birth or marriage, live in the same household with, be an employee of, or maintain any other relationship with the provisional licensed marriage and family therapist that may be considered a dual relationship which may impede the *LMFT board-approved supervisor* from effectively providing for the professional development of the supervisee and monitoring the ethical and professional quality of the

supervisee's service delivery to clients. During the course of the supervisory process, The *LMFT board-approved supervisor* maintains an appropriate level of responsibility for the supervisee's delivery of services and provides an accurate and true representation to the public of those services and the supervisor/supervisee relationship. A *LMFT board-approved supervisor* may use the initials LMFT-S for licensed marriage and family therapy supervisor after his or her name. Henceforth, the *LMFT board-approved supervisor* will be called the approved supervisor or the supervisor.

* * *

Qualified Supervision—supervision of the clinical services of a provisional licensed marriage and family therapist by a board-approved supervisor or supervisor candidate for the purpose of qualifying the provisional licensed marriage and family therapist for licensure as a LMFT in Louisiana in accordance with the plan of supervision approved by the advisory committee. Under no circumstances shall any contact that is not face-to-face (such as interaction by conventional correspondence, telephone, e-mail, instant message, video conference, etc.) between an LMFT board-approved supervisor or supervisor candidate and a provisional licensed marriage and family therapist be considered qualified supervision unless such contact is pre-approved by the advisory committee as part of the supervisee's plan of supervision.

a. …

b. Any didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar shall not normally be considered qualified supervision. If, however, the board-approved supervisor deems such experience as necessary to the supervisee's successful completion of his or her post-graduate clinical supervised experience, such experience may be included in the supervisee's plan of supervision. Approval of such experience as qualified supervision will be at the discretion of the advisory committee.

c. …

Provisional Licensed Marriage and Family Therapist—an individual who has made formal application for provisional licensure as a *provisional licensed marriage and family therapist* documenting that he or she has satisfactorily met the standards specified in the Rule for a *provisional licensed marriage and family therapist* as determined by the advisory committee and who has received a letter from the board indicating their provisional licensure as such. A *provisional licensed marriage and family therapist* may use the initials PLMFT after his or her name. Provisional licensed marriage and family therapists shall not identify or represent themselves by any other term or title, including "licensed", "fully licensed", "Licensed Marriage and Family Therapist", "LMFT", or "therapist". It is the responsibility of the *provisional licensed marriage and family therapist* to comply with this Rule and board policy in the provision of services to their clients during their postgraduate supervised clinical experience. It is also the *provisional licensed marriage and family therapist's* responsibility to offer reasonable compliance to the plan of supervision and to the directives and suggestions of their supervisor as they are consistent with law, ethics, statutes, and board policy. It is the primary responsibility of the *provisional licensed marriage and family therapist* to ensure that he or she has a thorough, current knowledge of his or her legal, ethical, and professional responsibilities and that his or her behavior is in compliance with ethical and legal requirements. Henceforth, the *provisional licensed marriage and family therapist* will be called the PLMFT or in some instances the supervisee or licensee.

Supervision—the professional relationship between a supervisor and supervisee that nurtures the professional self of the supervisee, promotes the development of the supervisee's therapeutic knowledge and skill, contributes to the supervisee's development of sound ethical judgment, and reasonably ensures that the therapeutic services delivered by the supervisee meet a minimum standard of clinical and ethical quality. The supervisor provides guidance and instruction that is of such quality, frequency, and regularity that the clinical and professional development of the supervisee is promoted and the supervisee's service delivery is adequately monitored. *Supervision* involves the clinical review of the superviee's work with clients that may utilize therapist self-report and review of clinical documentation, review of audiotapes or videotapes, or direct observation of live therapy sessions.

Supervisee—a provisional licensed marriage and family therapist under the active supervision of his/her board-approved supervisor or board-approved supervisor candidate.

The Plan of Supervision for PLMFTs—a written agreement between the board-approved supervisor and the PLMFT that establishes the supervisory framework for the postgraduate clinical experience of the supervisee and describes the expectations and responsibilities of the board-approved supervisor and the PLMFT as a supervisee. It is the responsibility of the PLMFT to submit the plan of supervision to the advisory committee in a manner consistent with advisory committee policy.

* * *

C. PLMFT Supervision Requirements for Licensure

1. A PLMFT must complete qualified postgraduate clinical experience under the supervision of a board-approved supervisor or registered supervisor candidate that consists of work experience in marriage and family therapy and that includes at least 3,000 hours of clinical services to individuals, couples, families, or groups. An out-of-state applicant may transfer up to 2500 hours of supervised experience towards licensure (a maximum of 1600 direct client contact hours, a maximum of 815 indirect hours, and a maximum of 85 hours of face-to-face supervision). The aforementioned hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of PLMFTs set forth by the advisory committee. The decision to approve transfer of hours and supervisors from out of state shall be made at the discretion of the advisory committee.

a. - b. …

c. The provisional licensee must apply and be approved for licensure within six years from date of approval as a provisional licensed marriage and family therapists. After six years, the licensee will forfeit all supervised experience hours accrued and must reapply for provisional licensure under current requirements and submit

recent continuing education hours (CEHs) as part of reapplication.

d. Applicants for provisional licensure as PLMFTs shall not provide psychotherapeutic services to clients unless they have received an official letter from the board qualifying them to do so or unless some other qualifying mental health license allows them to deliver such services. To continue employment in a clinical setting post-graduation, applicants who have graduated with qualifying degrees have 60 days from their date of graduation to apply for provisional licensure.

2. The postgraduate clinical experience must include at least 200 hours of qualified supervision, of which at least 100 hours must be individual supervision. The remaining 100 hours may be group supervision.

a. Up to 100 hours of face-to-face supervisor contact received during the completion of the applicant's qualifying academic experience graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 200 hours of qualified supervision. Of these 100 hours, only 50 hours may be counted as individual supervision.

3. The supervisee's plan of supervision must reflect that the supervisee is receiving supervision in the application of systemically based approaches to therapy with all clients.

4. The supervisee may begin accruing client- and supervisor-contact hours only after the supervisee has received an official letter of approval as a provisional licensed marriage and family therapist from the board.

5. The supervisee will be granted a change of approved supervisors or an additional approved supervisor only upon payment of the fee as defined in Chapter 9 and upon the approval of appropriate documentation as determined by the advisory committee.

a. In the event of a change or addition of supervisor(s), the supervisee must submit appropriate documentation for each proposed supervisor. Supervision with the new supervisor is not approved until the supervisee receives a letter from the board approving the new supervisor and plan of supervision.

b. A change of supervisors or additional supervisor(s) will not be approved until all of the supervisee's existing supervisor(s) have submitted a documentation of experience form for the supervisee in accordance with advisory committee policy.

6. Final approval of the supervisee's supervised work experience toward licensure shall be at the discretion of the advisory committee and only upon recommendation of the board-approved supervisor(s).

7. - 7.e. …

D. Renewal Requirements for Provisional Licensed Marriage and Family Therapists

1. A provisional licensed marriage and family therapist shall renew his/her provisional license every two years in the month of October by meeting the following requirements each renewal period:

a. 20 clock hours of continuing education in accordance with 3315.E.

b. Submit a renewal fee as prescribed in Chapter 9.

c. Submit supervised experience hours accrued (direct, indirect, face to face supervision) since approval/renewal as a provisional licensed marriage and family therapist.

d. Take the national marriage and family therapist examination as determined by the advisory committee and request the submission of a score report to the board by the testing agency until a passing score is achieved. If a passing score is not achieved, the national marriage and family therapist examination must be taken at least once per renewal period. At the discretion of the advisory committee, an oral examination may be required as well.

e. Submit an updated statement of practice if there has been a change in the area of expertise, with the content being subject to board review and approval. The advisory committee, at its discretion, may require the licensee to present satisfactory evidence supporting any changes in area of expertise noted in the declaration statement. All other changes as defined in Chapter 33, Section 3315(A)6) should be submitted to the board within thirty days of said change.

2. The board chair, upon recommendation of the advisory committee, shall issue a document renewing the provisional license for a term of two years. The provisional license of any licensee who fails to have his/her provisional license renewed every two years during the month of October shall lapse. An individual with a lapsed license may not practice mental health counseling, identify his/herself as a provisional licensed marriage and family therapist or accrue any supervised experience hours. A lapsed provisional license may be renewed within a period of ninety days or postmarked by January 31 upon payment of all fees and arrears and presentation of all required documentation. After ninety days, the licensee will forfeit all supervised experience hours accrued during that renewal period and must reapply for provisional licensure under current requirements and submit recent continuing education hours (CEHs) as part of reapplication.

3. The provisional licensee must apply and be approved for licensure within six years from date of approval as a provisional licensed marriage and family therapist. After six years, the licensee will forfeit all supervised experience hours accrued and must reapply for provisional licensure under current requirements and submit recent continuing education hours (CEHs) as part of reapplication.

E. Continuing Education Requirements for Provisional Licensed Marriage and Family Therapists

1. A provisional licensee must accrue 20 clock hours of continuing education by every renewal period every two years. Of the 20 clock hours of continuing education, one and a half clock hours must be accrued in ethics specific to marriage and family therapy and one and a half clock hours must be accrued in diagnosis (assessment, diagnosis, and treatment under the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) as published by the American Psychiatric Association on May 18th, 2013). The required training in diagnosis, assessment, and treatment under the DSM-5 may be specific to a particular condition and/or may be general training in diagnosis, assessment, and treatment. A generic ethics course is not acceptable.

a. One continuing education hour (CEH) is equivalent to one clock hour.

b. Accrual of continuing education begins only after the date the license was issued.

c. CEHs accrued beyond the required 20 hours may not be applied toward the next renewal period. A provisional licensee renewal period runs November 1 to October 31, every two years.

d. The licensee is responsible for keeping a personal record of his/her CEHs until official notification of renewal is received. Licensees should not forward documentation of CEHs to the board office as they are accrued.

e. At the time of renewal, 10 percent of the licensees will be audited to ensure that the continuing education requirement is being met. Audited licensees will be notified to submit documentation of CEHs.

f. Those provisional licensed marriage and family therapists who hold another license that requires CEHs may count the CEHs obtained for that license toward their PLMFT continuing education hour requirements. Of the 20 CEHs submitted, however, 10 hours must be in the area of marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of systemic psychotherapeutic work with couples or families including one and a half clock hours of ethics specific to marriage and family therapy and one and a half clock hours specific to diagnosis.

2. Approved Continuing Education for Provisional Licensed Marriage and Family Therapists

a. Continuing education requirements are meant to encourage personal and professional development throughout the licensee's career. For this reason, a wide range of options are offered to accommodate the diversity of licensees' training, experience, and geographic locations.

b. A licensee may obtain the 20 CEHs through one or more of the options listed below. A maximum of 10 CEHs may be obtained through an online format, with the exception of coursework obtained through a regionally accredited institution of higher education.

i. The advisory committee will accept workshops and presentations approved by the American Association for Marriage and Family Therapy (AAMFT) and its regional or state divisions including the Louisiana Association for Marriage and Family Therapy (LAMFT). Contact them directly to find out which organizations, groups, or individuals are approved providers graduate coursework either taken for credit or audit must be from a regionally accredited college or university and in the areas of marriage and family therapy described in §3315.E.4.

ii. Licensees may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner (either for credit or audit). Credit cannot be given to persons who leave early from an approved session or to persons who do not successfully complete graduate coursework.

iii. Continuing education taken from organizations, groups, or individuals not holding provider status by one of the associations listed in Clause i will be subject to approval by the advisory committee at the time of renewal.

(a). The advisory committee will not pre-approve any type of continuing education.

(b). The continuing education must be in one of the seven approved content areas listed in §3315.E.4 and given by a qualified presenter.

(c). A qualified presenter is someone deemed by the advisory committee to be a professional in marriage and family therapy, another mental health profession, or another profession with information, knowledge, and skills relevant to the practice of marriage and family therapy.

(d). One may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner.

(e). Credit cannot be granted for business/governance meetings; breaks; and social activities including meal functions, except for the actual time of an educational content speaker.

(f). Credit may not be given for marketing the business aspects of one's practice, time management, supervisory sessions, staff orientation, agency activities that address procedural issues, personal therapy, or other methods not structured on sound educational principles or for content contrary to the LMFT Code of Ethics (Chapter 43).

c. Optional Ways to Obtain Continuing Education (10 Hours Maximum)

i. Licensees may receive one clock hour of continuing education for each hour of direct work in:

(a). teaching a marriage and family therapy course (10 hours maximum) in an area as described in §3315.E.4. in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the individual teaches the course, or

(b). authoring, editing, or reviewing professional manuscripts or presentations (10 hours maximum) in an area of marriage and family therapy as described in §3315.E.4. Articles must be published in a professional refereed journal.

ii. Presentations at workshops, seminars, symposia, and meetings in an area of marriage and family therapy as described in §3315.E.4 may count for up to 10 hours maximum at a rate of two clock hours per one-hour presentation. Presenters must meet the qualifications stated in §3315.E.2.b.iii.(c). The presentation must be to the professional community, not to the lay public or a classroom presentation.

3. Continuing education hours must be relevant to the practice of marriage and family therapy and generally evolve from the following seven areas.

a. Theoretical Knowledge of Marriage and Family Therapy. Continuing education in this area shall contain such content as the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy and will be related conceptually to clinical concerns.

b. Clinical Knowledge of Marriage and Family Therapy: Continuing education in this area shall contain such content as:

i. couple and family therapy practice and be related conceptually to theory;

ii. contemporary issues, which include but are not limited to gender, violence, addictions, and abuse, in the treatment of individuals, couples, and families from a relational/systemic perspective;

iii. a wide variety of presenting clinical problems;

iv. issues of gender and sexual functioning, sexual orientation, and sex therapy as they relate to couple, marriage and family therapy theory and practice;

v. diversity and discrimination as it relates to couple and family therapy theory and practice.

c. Assessment and Treatment in Marriage and Family Therapy. Continuing education in this area shall contain such content from a relational/systemic perspective as psychopharmacology, physical health and illness, traditional psychodiagnostic categories, and the assessment and treatment of major mental health issues.

d. Individual, Couple, and Family Development. Continuing education in this area shall contain such content as individual, couple, and family development across the lifespan.

e. Professional Identity and Ethics in Marriage and Family Therapy. Continuing education in this area shall contain such content as:

i. professional identity, including professional socialization, scope of practice, professional organizations, licensure and certification;

ii. ethical issues related to the profession of marriage and family therapy and the practice of individual, couple and family therapy. Generic education in ethics does not meet this standard;

iii. the AAMFT Code of Ethics, confidentiality issues, the legal responsibilities and liabilities of clinical practice and research, family law, record keeping, reimbursement, and the business aspects of practice;

iv. the interface between therapist responsibility and the professional, social, and political context of treatment.

f. Research in Marriage and Family Therapy. Continuing education in this area shall include significant material on research in couple and family therapy; focus on content such as research methodology, data analysis and the evaluation of research, and include quantitative and qualitative research.

g. Supervision in Marriage and Family Therapy: Continuing education in this area include studies in theory and techniques of supervision as well as ethical and legal issues, case management, and topics relative to the specific supervised training.

F. Types of documentation needed for continuing education audit:

1. copy of certificate of attendance for workshops, seminars, or conventions;

2. copy of transcript for coursework taken for credit/audit;

3. letter from workshop/convention coordinator verifying presentation;

4. copy of article plus the table of contents of the journal it appears in, copy of chapter plus table of contents for chapter authored for books, title page and table of contents for authoring or editing books, letter from conference coordinator or journal editor for reviewing refereed workshop presentations or journal articles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:1114 (June 2009), LR 38:1966 (August 2012), LR 39:1806 (July 2013), LR 41:

§3317. Qualifications of the LMFT-Approved Supervisor, LMFT-Registered Supervisor Candidate, Board-Approved Supervisor, and Registered Supervisor Candidate

A. Qualifications of an LMFT-Approved Supervisor and a LMFT-Registered Supervisor Candidate

1. Supervision not provided by an LMFT-approved supervisor or an LMFT-registered supervisor candidate as determined by the advisory committee will not be counted toward licensure.

2. A supervisor may not have more than a combined total of 10 supervisees, including PLMFTs and licensees in other disciplines and/or registered supervisor candidates at the same time.

3. A person who wishes to become an LMFT-approved supervisor must be a licensed marriage and family therapist and must submit a completed application that documents that he or she meets the requirements. in one of two ways.

a. The applicant may meet the requirements by meeting the following coursework, experience, and supervision of supervision requirements.

i. Coursework requirements:

(a). a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution; or

(b). an equivalent course of study consisting of a 15-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision approved by the advisory committee. The interactive component must include a minimum of four persons.

ii. Experience requirements:

(a). has a minimum of two years experience as a licensed marriage and family therapist.

iii. Supervision of Supervision requirements:

(a). Thirty-six hours of supervision of supervision for marriage and family therapy must be taken from an LMFT-approved supervisor.

b. Designation as an AAMFT approved supervisor qualifies a person to become an LMFT approved supervisor. Documentation must be submitted and recommended by the advisory committee for board approval.

4. LMFT-registered Supervisor Candidate

a. A person who wishes to become an LMFT-registered supervisor candidate must submit an application provided by the board upon recommendation of the advisory committee that:

i. includes documentation of a minimum of two years of experience as a licensed marriage and family therapist;

ii. either documents that he or she has met the coursework and interactional requirement specified in Clause D.3.a.i. or proposes how this requirement shall be met;

iii. includes the name of the LMFT-approved supervisor who will be supervising his or her supervision of PLMFTs and the approximate dates such supervision will begin and end.

b. The advisory committee will review the application and inform the individual in writing that the proposed supervision of supervision arrangement either has been approved or rejected. Any rejection letter will outline the reasons for rejection.

c. An advisory committee member cannot participate in deliberations or votes on any applicant who has been supervised by that advisory committee member.

d. Upon completion of the required hours of supervision of supervision, the registered supervisor candidate must submit an application to become an LMFT approved supervisor.

B. Qualification of the Board-Approved Supervisor and Registered Supervisor Candidate

1. The board, upon recommendation of the advisory committee, shall grant those persons that make formal application and satisfactorily meet all the requirements of this Rule the position of board-approved supervisor or registered supervisor candidate.

2. The applicant for certification as a board-approved supervisor or registration as a supervisor candidate shall have maintained an active license in good standing as a LMFT for a minimum of two years.

3. The applicant who has an unresolved or outstanding complaint or who is under a consent order or participating in a plan of discipline as a mental health professional must indicate this on his or her formal application and shall be granted board-approved supervisor or supervisor candidate's status only at the discretion of the advisory committee.

C. Requirements for Certification as a Board-Approved Supervisor

1. Applicants for certification as a LMFT board-approved supervisor must make formal application to the board in accordance with advisory committee policy demonstrating that he or she has satisfactorily met the following requirements.

a. Experience Requirements. While maintaining a license in good standing as a LMFT, the applicant must have completed a minimum of two years of professional experience as a marriage and family therapist working with individuals, couples, families or groups from a systemic perspective or working as an academic clinical supervisor utilizing a systemic orientation as determined by the advisory committee.

b. Coursework Requirements. The applicant must have completed:

i. a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution; or

ii. an equivalent course of study consisting of a 15-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision approved by the advisory committee. The interactive component must include a minimum of four persons.

c. Supervision-of-Supervision Requirements. The applicant must have completed 36 hours of supervision-of-supervision of marriage and family therapy with the oversight of a designated board-approved supervisor as determined by the advisory committee. Registered supervisor candidates may not qualify to provide supervision-of-supervision to other registered supervisor candidates.

d. The applicant for the position of LMFT board-approved supervisor who is not registered as a supervisor candidate may not begin qualified supervision of PLMFTs until receipt of an official approval letter from the board as a LMFT board-approved supervisor.

2. Applicants for certification as a board-approved supervisor must submit with their application for certification a nonrefundable application fee of $100.

3. Designation as an AAMFT board-approved supervisor may qualify a person to become an LMFT board-approved supervisor. AAMFT supervisors must make application to the board in accordance with advisory committee policy in order to certify as board-approved supervisors. AAMFT supervisors who have not certified to be LAMFT board-approved supervisors shall not supervise PLMFTs. Supervision provided by an AAMFT supervisor who has not received certification from the board qualifying them as a LMFT board-approved supervisor shall not count toward licensure.

4. The board-approved supervisor shall attend a LMFT board-approved supervisor's orientation approved by the advisory committee within one year of the board-approved supervisor's date of certification. This orientation may also be counted as continuing education toward the board-approved supervisor's licensure renewal as a marriage and family therapist.

a. Board-approved supervisors who fail to meet this requirement within one year of their initial certification as board-approved supervisors will not be approved for new supervisees until the requirement is met. Failure to meet this requirement within two years of the date of approval may result in the suspension of approved supervisor status.

b. This requirement may be met during the supervisor candidate's supervision-of-supervision. If the candidate elects to do so, the orientation hours may count toward the continuing education requirements for renewal of his or her LMFT license.

D. Requirements for Registration as a Registered Supervisor Candidate

1. The applicant for registration as a LMFT registered supervisor candidate must submit to the board a formal application and a plan of supervision-of-supervision in accordance with advisory committee policy.

a. The registered supervisor candidate's supervision-of-supervision must include:

i. a minimum of two MFT students or PLMFTs supervised for a minimum of nine months each;

ii. at least 90 hours of supervision of approved supervisees. These 90 hours of supervision must be completed in no less than one year and no more three years with the oversight of his or her designated board-approved supervisor.

b. The applicant for registration as a LMFT registered supervisor candidate shall not supervise PLMFTs or begin accruing supervisor or supervisee contact hours toward his or her certification as a board-approved supervisor until he or she has received an official letter from the board approving his or her registration as a supervisor candidate.

2. The registered supervisor candidate who has successfully completed his or her plan of supervision-of-supervision must make formal application in accordance with advisory committee policy to be considered for certification as a board-approved supervisor.

3. Final approval of the approved supervisor candidate's supervised work experience toward certification as an approved supervisor shall be at the discretion of the advisory committee and only upon recommendation of the candidate's board-approved supervisor(s).

E. Renewal of Certification as a Board-Approved Supervisor

1. The board-approved supervisor shall renew his or her board certification to supervise PLMFTs every four years. Supervisors will receive a renewal announcement from the board providing them with their required renewal date and will receive a renewal notice every four years thereafter.

2. To qualify for renewal, board-approved supervisors must:

a. maintain an active LMFT license in good standing as defined by this Rule. Applicants for renewal of their board-approved supervisory status that are under a consent order as a licensee may be renewed only at the discretion of the advisory committee.

b. complete six clock hours of continuing education in clinical MFT supervision prior to each renewal date for current renewal period. These continuing education hours may also count toward the board-approved supervisor's renewal requirements for licensure as a LMFT;

i. continuing education for board-approved supervisors must be specifically relevant to the renewal candidate's role as clinical supervisor of PLMFTs as determined by the advisory committee. The content of workshops and seminars that qualify for continuing education credit for renewal candidates may be in theories and techniques of MFT supervision as well as ethical and legal issues related to MFT supervision, case management, or topics relative to a specific supervised setting;

ii.requirements otherwise applicable to continuing education hours for board-approved supervisors are the same as continuing education hours required for maintenance of the supervisor's LMFT license as defined in these rules;

c. successfully complete the board-approved orientation workshop for supervisors. The orientation shall not count toward the required six hours of required continuing education for board-approved supervisors;

d. submit a completed board-approved supervisor renewal application along with any updates to the supervisor's statement of practice in accordance with advisory committee policy;

e. remit a renewal fee of $100.

3. After the renewal candidate has successfully completed the above requirements, the board upon recommendation of the advisory committee shall issue a document renewing the supervisor's board certification for a term of four years.

a. The board approval of any board-approved supervisor who fails to meet renewal requirements shall lapse; however, the failure to renew said approval shall not deprive said supervisor the right of renewal thereafter.

b. Board-approved supervisors who do not renew their board-approved supervisor's status will not be approved for new PLMFTs until the board-approved supervisor has renewed his or her supervisory approval or has successfully reapplied for board-approved supervisor status.

c. A board-approved supervisor who has allowed his or her board-approved supervisor status to lapse may renew within a period of two years after the lapsed renewal date upon payment of all fees in arrears and presentation of evidence of completion of the continuing education and orientation requirements.

d. Upon late renewal or reapplication, the board-approved supervisor's four-year renewal cycle will begin on his or her nearest licensure renewal date to the supervisor's renewal/reapproval.

e. Application for renewal after two years from the date of supervisor status lapse will not be considered for renewal. Applicants whose supervisor status has lapsed for two years or more must re-apply for certification as a board-approved supervisor under current requirements.

f. Failure to renew or reapply for board approved supervisory status does not necessarily impact the supervisor's right or ability to renew or reapply as a LMFT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

§3319. Responsibilities of the Provisional Licensed Marriage and Family Therapist

A. General Responsibilities

1. The PLMFT is responsible to be thoroughly aware of his or her legal, ethical, and professional responsibilities as a supervisee and to maintain a level of care for clients that meets the standards for licensed marriage and family therapists as described in this Rule.

2. The PLMFT is responsible to meet with the board-approved supervisor(s) for qualified supervision in the manner prescribed in the plan of supervision. The PLMFT must receive active supervision as defined in §3105.

3. The PLMFT is responsible to collaborate with his or her approved supervisor(s) in order to develop and submit to the advisory committee a plan of supervision as defined in Section 3315.B.

4. It is the responsibility of the supervisee to immediately report to the approved supervisor(s), the supervisee's employer or contractor, and the board any changes in the supervisee's status (loss of employment, change of job status, serious illness, legal difficulty, etc.) that significantly affect the supervisee's continued qualification as a PLMFT, due qualification as a LMFT, ability to meet the terms of the plan of supervision, or ability to provide the standard of care to clients as defined in this Rule.

a. The supervisee shall report to the approved supervisor(s) and the board within thirty days any change in status that would affect the ability of the supervisor or the board to contact the supervisee, such as changes in postal address, telephone number, or e-mail address.

b. As the board-approved supervisor has knowledge, he or she shall ensure that the supervisee reports such changes in status to the board in accordance with advisory committee policy.

c. The supervisee is responsible to collaborate with his supervisor(s) over the course of his or her postgraduate clinical experience to develop, maintain, and fulfill a plan of supervision that meets the developmental needs of the supervisee, provides for an appropriate level of professional care for the supervisee's clients, allows for the adequate monitoring of the supervisee's practice by the board-approved supervisor(s) or supervisor candidate, and allows for the supervisee's timely qualification as a LMFT.

d. It is the responsibility of the supervisee to submit amendments to the plan of supervision to the advisory committee within thirty days for approval in accordance with advisory committee policy.

5. The PLMFT is responsible to meet with the approved supervisor(s) with a regularity, frequency, and manner prescribed by the board-approved plan of supervision.

a. The supervisee shall inform the board in writing within 30 days in accordance with advisory committee policy in the event that the supervisee's supervisor becomes unwilling or unable to fulfill his or her responsibility to the supervisee as defined in the board-approved plan of supervision.

b. In the event that an approved supervisor becomes unwilling or unable for any reason to fulfill the duties as a qualified supervisor, the advisory committee shall assist this supervisor's supervisees according to advisory committee policy in acquiring interim supervision until a suitable board-approved supervisor can be located in order to preserve continuity of care for the supervisee's clients.

c. Should an interim supervisor not be located in a timely manner as determined by the advisory committee, the supervisee must suspend services to clients until such time as a new supervisor can be located. In such circumstances it is the responsibility of the supervisee to work with his administrative supervisor to see that his clients are appropriately referred.

6. The supervisee is responsible to be thoroughly aware of the terms of his or her employment as an employee or private contractor as well as the administrative policies and procedures of his employer and/or administrative supervisor.

a. In the event that the standard of professional behavior and/or client care provided by the supervisee's employer or administrative supervisor exceeds that of the minimum standards in this Rule, the supervisee should to the best of his ability adhere to the higher standard.

b. In the event that a conflict between the policies, procedures, or directives of the supervisee's employer or administrative supervisor impedes the ability of the supervisee to comply with the directives of the supervisee's board-approved supervisor(s), the terms of the supervisee's plan of supervision, or the standard of professional behavior described in this Rule, the supervisee shall inform his or her approved supervisor(s) immediately.

7. The supervisee may not have ownership of all or part of any mental health counseling practice or accept any direct fee for service from therapy clients. The supervisee may receive a wage for services rendered as an employee or as a private contractor. Should the supervisee receive monetary compensation as a private contractor for services for which his status as a supervisee qualifies him, the contractual agreement under which the supervisee receives compensation must specify a person who functions in the workplace as an administrative on-site supervisor for the supervisee in his delivery of services under the contract.

B. Specific Responsibilities of the PLMFT to the Approved Supervisor. It is the responsibility of the PLMFT to:

1. follow to the best of the supervisee's ability the clinical suggestions and directives of the supervisor as the supervisor's suggestions and directives are consistent with the ethical, legal, and professional standards provided in this Rule as determined by the advisory committee;

2. provide the supervisor with adequate information about his or her clinical work with clients such that the supervisor can monitor the supervisee's clinical practice and assist the supervisee in maintaining an appropriate standard of care for all clients. The supervisee shall provide his supervisor(s) with reasonable access to all written or electronic documentation that relates to the supervisee's provision of therapeutic services to his clients;

a. The supervisee shall inform the supervisor(s) immediately in the event that the supervisee believes that a client has committed or is a risk for suicide, homicide, or any other seriously harmful behavior to self or others or is the perpetrator of abuse to a minor, elderly, or disabled person.

b. The supervisee's reporting such information as described in Subparagraph B.2.a of this Section to the supervisor is not a substitute for the supervisee's preeminent obligation to report directly to appropriate authorities in circumstances in which the law or ethics requires the mandatory reporting of suspected abuse or imminent personal risk.

3. earnestly endeavor to resolve with the supervisee's supervisor(s) any personal or professional conflict that may hinder the supervisee in collaborating with supervisor(s) in the provision of an appropriate standard of care to clients, successfully completing the terms of the plan of supervision, or successfully qualifying for licensure as a LMFT;

a. In the event that such conflict cannot be resolved in a timely manner, the supervisee shall request assistance in writing from the advisory committee in accordance with advisory committee policy.

b. The supervisee will accept as final any plan to resolve such conflict upon recommendation of the advisory committee as approved by the board.

4. in the event of multiple supervisors, the supervisee will immediately inform the supervisor(s) if the clinical directives or ethical guidance of one supervisor seem to significantly conflict with another such that the supervisee is impeded in providing an appropriate level of client care. In the event that such conflict cannot be resolved in a timely manner, the supervisee or the supervisor(s) may request assistance in writing from the advisory committee in accordance with advisory committee policy.

C. Revocation, Suspension, or Limitation of the Terms of the Provisional Licensure of the PLMFT.

1. The board upon recommendation of the advisory committee may withhold, deny, revoke, suspend or otherwise limit the terms of the provisional licensure of a PLMFT on a finding that the PLMFT has violated any of the rules, regulations, or ethical standards for licensed or

provisionally licensed marriage and family therapists as pertains to the supervision of PLMFTs contained in this Rule or prior final decisions and/or consent orders involving the PLMFT.

2. The advisory committee shall provide due notice to the supervisee's designated approved supervisor(s) of any change or potential change in the supervisee's qualification as a PLMFT in accordance with advisory committee policy.

3. The approved supervisor(s) of a supervisee whose provisional licensure as a PLMFT has been revoked, suspended, or otherwise limited shall immediately inform his administrative or site supervisor(s) of the supervisee's of change in status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:1970 (August 2012), LR 41:

§3321. Responsibilities of the LMFT Board-Approved Supervisor and Registered Supervisor Candidate

A. General Responsibilities

1. It is the primary function of supervisors in their relationships with their supervisees to protect the welfare of the public in every circumstance. Supervisors work with the board and their supervisee to protect the right of every client to ethical, professional treatment. Henceforth, any portion of the Rule that applies to board-approved supervisors will also be considered to apply to supervisor candidates except where specifically noted.

a. The supervisor shall maintain a current knowledge of and represent accurately to supervisees and to the public the process of qualification of PLMFTs for licensure.

b. The supervisor shall manage all information pertaining to the clients of the supervisee with the same level of confidentiality mandated in this Rule for licensed marriage and family therapists as in their interaction with their own clients.

c. The supervisor shall, to the best of his ability and knowledge, address in an accurate, timely fashion any reasonable question or concern directed to the supervisor by clients of the supervisee about the professional status of the supervisee or the quality of care being provided to the client by the supervisee.

d. In the event that the client of an supervisee makes a complaint or provides information to the supervisor that the supervisee may have committed a breach of the minimum standards of client care provided in this Rule resulting in harm or potential harm to the client, it is the responsibility of the supervisor to provide corrective feedback to the supervisee, warn the client of potential risk, and report the actions of the supervisee to the board in accordance with advisory committee policy.

2. A supervisor may not have more than a combined total of 10 supervisees, including PLMFTs and supervisees in other disciplines and/or registered supervisor candidates.

3. The supervisor is responsible for assisting the supervisee in developing and maintaining the plan of supervision and monitoring the timely submission of appropriate documentation to the board on behalf of the supervisee.

4. The supervisor shall provide qualified supervision to the supervisee until the supervisor has received official notice from the board that the supervisee is licensed as a LMFT, been officially assigned by the board to another supervisor, or has otherwise lost or forfeited qualification as a PLMFT. Nonpayment of the supervisor's fees by the supervisee is not grounds for the suspension by the supervisor of supervisory meetings with the supervisee as specified by the board-approved plan of supervision.

5. It is the responsibility of the supervisor to immediately report to the board and his/her designated supervisees in accordance with advisory committee policy any changes in his status (loss of employment, serious illness, legal problems, etc.) that may significantly affect his/her certification as an approved supervisor or supervisor candidate or his/her ability as an approved supervisor to fulfill his/her duties as described in this Rule or in the plan of supervision/plan of supervision-of-supervision. The supervisor shall within thirty days also report to the board any change in status that may affect the ability of the board to contact him or her (change of address, telephone number, e-mail address, etc.).

6. As he/she has knowledge, the supervisor shall ensure that the supervisee reports such changes in status to the board in accordance with advisory committee policy that would affect the ability of the supervisor or the board to contact the supervisee, such as changes in postal address, telephone number, or e-mail address.

7. It is the responsibility of the supervisor to supervise supervisees within his or her scope of practice. The supervisor shall not present himself as providing supervision in any particular therapeutic approach, technique, or theoretical orientation in which the supervisor has not been thoroughly trained and had adequate experience to provide competent supervision as determined by the advisory committee.

8. It is the responsibility of the supervisor to observe the practice of the supervisee through clinical case review, real-time observation of the supervisee's sessions, or by reviewing session video- or audio-tapes such that the supervisor is sufficiently able to monitor the practice of the supervisee and guide the supervisee in maintaining the minimum standard of care for his clients defined in this Rule and the plan of supervision.

a. The supervisor shall ensure that the regularity, duration, and quality of supervision sessions are adequate to provide continuity, support, and nurturance to the supervisee and to monitor the professional quality of the supervisee's service provision to clients.

b. The supervisor shall provide timely, accurate feedback to the supervisee, the supervisee's other supervisors, and the advisory committee in accordance with advisory committee policy in regard to the professional developmental of the supervisee, his or her progress in completing the plan of supervision, or any other information that relates to the supervisee's ability to provide adequate care to clients.

c. When a supervisor receives information that suggests that the behavior of a supervisee may present a clear and significant threat to the welfare of a client, it is the responsibility of the supervisor to immediately provide corrective feedback to the supervisee.

d. In the event of Subparagraph A.8.c of this Section and if the supervisor determines that the supervisee has failed to respond appropriately by acting to protect the welfare of the client, it is the responsibility of the supervisor to immediately report the behavior of the supervisee to the board according to advisory committee policy and immediately inform the client of the potential risk. The supervisor should use his clinical judgment in such matters, balancing his or her roles as mentor to the supervisee and protector of the public with protection of the public preeminent.

9. The supervisor shall keep true, accurate, and complete records in accordance with advisory committee policy of his or her interactions with supervisees and their clients and respond within 30 days to any request by the board to audit records pertaining to the supervision of supervisees.

10. It is the responsibility of the supervisor to recommend for licensure as a LMFT those and only those PLMFTs that to the best of his or her knowledge have completed the requirements for licensure contained in this statute, satisfactorily fulfilled the terms of the board-approved plan of supervision, and have otherwise demonstrated a satisfactory level of competence in delivering professional services to their clients during the course of their postgraduate clinical experience.

11. …

B. Specific Responsibilities of the Supervisor to the PLMFT. It is the responsibility of the supervisor to:

1. review with the supervisee a copy of the supervisor's board-approved statement of practice, provide a copy of this statement to the supervisee, and file a copy of this statement with the board in accordance with advisory committee policy;

2. provide guidance and training to the supervisee in the ethical and competent delivery of psychotherapeutic services in a manner that leads the supervisee toward qualification as a LMFT. This includes but is not limited to guidance and training in diagnosis and treatment of emotional, mental, behavioral, and addictive disorders, problem assessment, treatment plan development, application of therapeutic knowledge, joining skills, technique selection, intervention skills/outcome assessment, application of ethical and legal principles, case documentation and reporting, case management, and consultation protocol;

3. provide a respectful and confidential learning environment for the supervisee that promotes the supervisee's professional development as a LMFT, encourages the supervisee's successful completion of the plan of supervision, and provides a controlled space for supervision sessions where the supervisee may discuss confidential case material without the risk of violating client confidentiality;

4. oversee the formulation of the supervisee's plan of supervision in accordance with advisory committee policy that provides reasonable access for the supervisee to the board-approved supervisor and the supervision process, meets the developmental needs of the supervisee, and affords the supervisor adequate contact with the supervisee to appropriately monitor the quality of the supervisee's service delivery to clients;

a. The supervisee or the supervisor may request to amend the plan of supervision during the course of post-graduate clinical experience. Changes to the plan of supervision should be the result of collaboration between the supervisee and the board-approved supervisor;

b. It is the responsibility of the supervisor to oversee the supervisee's submission of amendments to the plan of supervision to the advisory committee within thirty days for approval in accordance with advisory committee policy.

5. assist the supervisee in finding a suitable resolution in the event that the policies of the supervisee's employer or contractor impede the supervisee in providing a level of care to clients that meets the standards provided by board policy or this Rule. The supervisor should make reasonable effort to assist the supervisee in resolving such conflicts in a manner that if possible allows the supervisee to maintain his or her employment, comply fully with responsibilities as described in this statute, and complete the plan of supervision successfully;

6. assist the supervisee in identifying personal and professional strengths and weaknesses that affect the supervisee's development as a family therapist and provide regular, meaningful feedback in accordance with advisory committee policy that will help the supervisee reinforce his strengths while improving his weaknesses;

7. avoid any dual relationship that could result in exploitation of the supervisee, compromise the supervisor's ability to prioritize the welfare of the supervisee's clients, or hinder the supervisor in providing objective feedback to the board or the supervisee's about his progress toward qualification as a LMFT;

a. in the event that the supervisor also has administrative responsibility for the supervisee in an agency or business, it is the responsibility of the supervisor to prioritize the welfare of the supervisee's clients and the developmental needs of the supervisee over the needs of the supervisor's employing organization;

b. the supervisor should not employ the supervisee in his or her business as an employee or as a private contractor. In the event that such employment is necessary to the supervisee's ability to qualify as a PLMFT, special permission for such employment may be granted at the discretion of the advisory committee;

c. if the PLMFT is employed by or contracts with the supervisor in his business or private practice to provide services for which his status as PLMFT qualifies him, the supervisor must not profit monetarily from the services of the supervisee beyond the supervisor's reasonable and customary fee for supervision as reflected in the board-approved supervisor's statement of practice and as defined in the supervisee's board-approved plan of supervision;

d. the supervisor shall not maintain any social relationship (friendship or romantic relationship) with the supervisee that could result in exploitation of the supervisee or could impair the objectivity of the supervisor in his or her roles as trainer of the supervisee and protector of the public;

8. submit all appropriate documentation designated for supervisors using the appropriate forms as determined by the advisory committee and in a manner that does not unnecessarily impede the supervisee's ability in a timely manner to qualify as a LMFT;

9. refer the supervisee for counseling or psychotherapy at the request of the supervisee or as the supervisor may deem prudent in assisting the supervisee in maintaining mental and emotional health sufficient to provide services to clients that meet the standard of care as defined by this Rule. The supervisee's supervisor(s) shall not under any circumstances provide counseling, psychotherapy, or psychological testing to the supervisee;

10. earnestly endeavor to resolve with the supervisee any personal, professional, or ethical conflicts that hinder the supervisor in effectively collaborating with the supervisee toward the provision of an appropriate standard of care to clients or successfully completing the terms of the plan of supervision.

a. It is the responsibility of the supervisor to take appropriate initiative to resolve such conflicts in a manner that is respectful to the supervisee and preserves continuity of care for the supervisee's clients.

b. …

D. Revocation, Suspension, or Limitation of the Board-Approved Supervisor Certificate of a Licensed Marriage and Family Therapist

1. The board upon recommendation of the advisory committee may withhold, deny, revoke, suspend or limit the board-approved supervisor certification of a LMFT on a finding that the board-approved supervisor has violated any of the rules, regulations, or ethical standards for board-approved supervisors as pertains to the supervision of PLMFTs contained in this Rule or prior final decisions and/or consent orders involving the board-approved supervisor or supervisor candidate.

2. The advisory committee shall provide due notice to the supervisor and his or her assigned PLMFTs and/or supervisor candidates of any change in the supervisor's qualification in accordance with advisory committee policy.

3. The board-approved supervisor or supervisor candidate has ninety days to appeal to the advisory committee in writing in accordance with advisory committee policy any withholding, denial, revocation, suspension, or limiting of the licensee's certification as board-approved supervisor or registration as a board-approved supervisor candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:1972 (August 2012), LR 41:

Chapter 35. Renewal of License for Licensed Marriage and Family Therapists

§3503. Continuing Education Requirements

A. - A.4. …

5. The licensee is responsible for keeping a personal record of his/her continuing education hours until official notification of renewal is received. Licensees should not forward documentation of CEHs to the board office as they are accrued.

6. - 8. …

9. A licensee must accrue six clock hours of training in diagnosis every renewal period that specifically addresses the assessment, diagnosis, and treatment of clinical conditions under the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5), as published by the American Psychiatric Association on May 18, 2013. This required training may be specific to the diagnosis, assessment, and treatment of a particular condition and/or may be general training in diagnosis, assessment, and treatment under the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5), as published on May 18, 2013

10. Those licensed marriage and family therapists who hold another license that requires continuing education hours may count the continuing education hours obtained for that license toward their LMFT CEH requirements. Of the 40 CEHs submitted, however, 20 hours must be in the area of marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of systemic psychotherapeutic work with couples or families including three clock hours of ethics specific to marriage and family therapy and six clock hours specific to diagnosis.

11. The approval of and requirements for continuing education are specified in Subsection C.

B. - B.4. …

C. Approved Continuing Education for Licensed Marriage and Family Therapists

1. …

2. An LMFT may obtain the 40 clock hours of continuing education through the options listed. Effective January 1, 2017, a maximum of 20 CEHs may be obtained through an online format, with the exception of coursework obtained through a regionally accredited institution of higher education. All continuing education hours may be obtained through Subparagraph a or 20 of the 40 hours may be obtained through Subparagraph b:

2.a. - 3.g. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:160 (February 2003), repromulgated LR 29:581 (April 2003, amended LR 29:2789 (December 2003), LR 41:

Chapter 37. Endorsement and Expedited Processing

§3701. Endorsement

A. Upon recommendation of the board and Marriage and Family Therapy Advisory Committee, the board shall issue a license to any person who has been licensed as a marriage and family therapist and has actively practiced marriage and family therapy for at least five years in another jurisdiction. The applicant must submit an application on forms prescribed by the board in the prescribed manner and pay the required licensure fee. Applicants must also have passed the Association of Marital and Family Therapy Regulatory Board's examination in marital and family therapy. An applicant must submit documentation of at least 40 CEHs, in accordance with the requirements listed in Chapter 35, within two years of the date of application for licensure endorsement in Louisiana. An applicant must also be in good standing in all jurisdictions in which they are licensed and must not have been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice marriage and family therapy in the state of Louisiana at the time the act was committed.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:162 (February 2003), LR 39:1806 (July 2013), LR 41:

Chapter 39. Disciplinary Proceedings

§3901. Causes for Administrative Action

A. The board, upon recommendation of the advisory committee, after due notice and hearing as set forth herein and the Administrative Procedure Act, R.S. 49:950 et seq., may withhold, deny, revoke or suspend any license or provisional license issued or applied for or otherwise discipline a licensed marriage and family therapist or provisional licensed marriage and family therapist on a finding that the person has violated R.S. 37: 1101-1123, any of the rules, regulations, and ethical standards for marriage and family therapy promulgated by the board for the advisory committee, or prior final decisions and/or consent orders involving the licensed marriage and family therapist, provisional licensed marriage and family therapist, or applicant for licensure or provisional licensure. Additionally, the board, upon recommendation of the advisory committee, may withhold, deny, revoke, or suspend any license or provisional license issued or applied for, or otherwise discipline or a LMFT or PLMFT as provided by other applicable state or federal laws, including but not limited to the following violations:

1. - 5. …

B. Sometimes hereinafter, where the context allows, a licensed marriage and family therapist, provisional licensed marriage and family therapist, or applicant for licensure or provisional licensure may be referred to as a licensee or applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 29:162 (February 2003), LR 41:

§3903. Disciplinary Process and Procedures

A. - B. …

C. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the person did certain acts or omissions and, if he did, whether those acts or omissions violated the Louisiana Mental Health Counselor Licensing Act, the rules and regulations and ethical standards for licensed marriage family therapy promulgated by the board for the advisory committee, or prior final decisions and/or consent orders involving the licensed marriage and family therapist, provisional licensed marriage and family therapist, or applicant for licensure or provisional licensure and to determine the appropriate disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:162 (February 2003), LR 41:

§3905. Initiation of Complaints

A. - B. …

C. Pursuant to its authority to regulate this industry, the board, upon recommendation of the advisory committee through its disciplinary committee, may issue subpoenas to secure evidence of alleged violations of the Louisiana Mental Health Counselor Licensing Act, any of the rules and regulations or ethical standards for licensed marriage and family therapists or provisional licensed marriage and family therapists promulgated by the board for the advisory committee, or prior final decisions and/or consent orders involving the licensed marriage and family therapist, provisional licensed marriage and family therapists, or applicant for licensure or provisional licensure. The subpoenaed confidential or privileged records of a patient or client are to be sanitized by the custodian of such records so as to maintain the anonymity of the patient or client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:162 (February 2003), LR 41:

§3909. Formal Hearing

A. The board upon recommendation of the disciplinary committee has the authority, granted by R.S. 37:1101 et seq., to bring administrative proceedings against persons to whom it has issued a license or provisional license upon recommendation of the advisory committee to practice as a licensed marriage and family therapist, provisional licensed marriage and family therapist, or any applicant requesting a license or provisional license. The person has the right to:

A.1. - C.2.b.iv. …

3. A notice of hearing is issued pursuant to R.S. 49:955, charging the violation of one or more of the provisions of the Louisiana Mental Health Counselor Licensing Act, the rules and regulations and ethical standards for licensed marriage and family therapists and provisional licensed marriage and family therapists promulgated by the board for the advisory committee thereto, or prior final decisions and/or consent orders involving the person.

4. - 8.d. …

9. The board chair presides as chair of the board over all hearings for licensed marriage and family therapists and provisional licensed marriage and family therapists. The customary order of proceedings at a hearing is as follows.

9.a. - 13.a.ii. …

iii. Determine whether charges brought are a violation of the Louisiana Mental Health Counselor Licensing Act or rules and regulations and ethical standards for marriage and family therapy promulgated by the board for the advisory committee.

b. Deliberation

i. - iii. …

iv. After considering and voting on each charge, the board will vote on a resolution to dismiss the charges, withhold, deny, revoke or suspend any license or provisional license issued or applied for or otherwise discipline a licensed marriage and family therapist, provisional licensed marriage and family therapist, or applicant for licensure or provisional licensure.

v. The board by affirmative majority vote may vote to withhold, deny, revoke, or suspend any license or provisional license issued or applied for in accordance with the provisions of R.S. 37, Chapter 13, or otherwise discipline a licensed marriage and family therapist, provisional licensed marriage and family therapist, or applicant.

c. Sanctions against the person who is party to the proceedings are based upon findings of fact and conclusions of law determined as a result of the hearing. The party is notified by certified mail of the final decision of the board.

14. - 15.c.iv. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:163 (February 2003), LR 41:

§3915. Refusal to Respond or Cooperate with the Board

A. …

B. If the person refuses to reply to the board's inquiry or otherwise cooperate with the board, the board shall continue its investigation. The board shall record the circumstances of the person's failure to cooperate and shall inform the person that the lack of cooperation may result in action by the board that could eventually lead to the withholding, denial, revocation or suspension of his/her license, provisional license, or application for licensure or provisional licensure, or otherwise issue appropriate disciplinary sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:165 (February 2003), LR 41:

§3917. Judicial Review of Adjudication

A. Any person whose license, provisional license, or application for licensure or provisional licensure, has been withheld, denied, revoked or suspended or otherwise disciplined by the board shall have the right to have the proceedings of the board reviewed by the 19th Judicial District Court for the parish of East Baton Rouge, provided that such petition for judicial review is filed within 30 days after receipt of the notice of the decision of the board. If judicial review is granted, the board's decision remains enforceable in the interim unless the 19th Judicial District Court orders a stay. Pursuant to the applicable section of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., this appeal shall be taken as in any other civil case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:166 (February 2003), LR 41:

§3921. Reinstatement of Suspended or Revoked License

A. The board is authorized to suspend the license of a licensed marriage and family therapist and the license of a provisional licensed marriage and family therapist for a period not exceeding two years. At the end of this period, the board shall re-evaluate the suspension and may reinstate or revoke the license or provisional license. A person whose license or provisional license has been revoked may apply for reinstatement after a period of not less than two years from the date such denial or revocation is legally effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:166 (February 2003), LR 41:

§3927. Disciplinary Costs and Fines

A. The board may assess and collect fines not to exceed five thousand dollars for violation of any causes for administrative action as specified in Section 3901.

B. The board may assess all costs incurred in connection with disciplinary proceedings including but limited to the costs of an investigator, stenographer, legal fees, or witness fees, and any costs and fees incurred by the board on any judicial review or appeal, for any licensee who has been found in violation of any causes for administrative action as specified in 3901.

C. After the decision of the board becomes final and delays for judicial review have expired, all costs and fees must be paid no later than ninety days or within a time period specified by board.

D. The board may withhold any issuance or reissuance of any license or certificate until all costs and fees are paid.

E. A person aggrieved by a final decision of the board who prevails upon judicial review may recover reasonable costs as defined in R.S. 37: 1106(D)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 41:

Chapter 41. Informed Consent

§4101. General Provisions

A. Licensees obtain appropriate informed consent to therapy or related procedures before the formal therapeutic process begins. Information provided to clients by licensees about the treatment process shall include, but is not limited to, the licensee's statement of practice as outlined in the Appendix (§4720). The licensee should be sure that the client understands all information provided before asking for consent to treatment. The content of informed consent may vary depending on the client and treatment plan; however, informed consent generally necessitates that the client:

1. - 5. …

B. When persons, due to age or mental status, are legally incapable of giving informed consent, licensees obtain informed permission from a legally authorized person, if such substitute consent is legally permissible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:166 (February 2003), LR 41:

Chapter 43. Privileged Communications

§4301. Privileged Communication with Clients

A. Licensees disclose to clients and other interested parties, as early as feasible in their professional contacts, the nature of confidentiality in the therapeutic process and possible limitations of the clients' right to confidentiality. Licensees review with clients the circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. Circumstances may necessitate repeated disclosures. Licensees also shall be aware of specific ethical requirements concerning marriage and family therapy as specified in the Code of Ethics (Chapter 47) and in §4301.C.

B. Licensees do not disclose client confidences except by written authorization or waiver, court order, or where mandated or specifically permitted by law, or reasonably necessary to protect the client or other parties from a clear and imminent threat of serious physical harm. Verbal authorization may be sufficient in emergency situations or where otherwise permitted by law.

C. Licensees shall be cognizant of and adhere to any confidentiality requirement that may differ from requirements in other licenses they hold. Licensees have unique confidentiality concerns because the client in a

therapeutic relationship may be more than one person. Licensees respect and guard the confidences of each individual client within the system of which they are working as well as the confidences of the system.

1. When providing couple, family, or group treatment, a licensee shall not disclose information outside the treatment context without a written authorization from each individual competent to execute a waiver.

2. In the context of couple, family, or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:167 (February 2003), LR 41:

Chapter 45. Exemptions

§4501. Exemptions

A. No person shall be required to obtain a license as a licensed marriage and family therapist or a provisional license as a provisional licensed marriage and family therapist. As stated in R.S. 37:1122(A), no person shall use ~~of~~ the title "Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist".

B. Nothing in this Chapter shall prevent qualified members of other professional groups as defined by the board upon recommendation of the advisory committee including but not limited to clinical social workers, psychiatric nurses, psychologists, physicians, licensed professional counselors, or members of the clergy, including Christian science practitioners, from doing or advertising that they perform work of a marriage and family therapy nature consistent with the accepted standards of their respective professions. However, no such person shall use the title "Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist". (R.S. 37:1121).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:167 (February 2003), LR 41:

Chapter 47. Code of Ethics

§4701. General

A. The Marriage and Family Therapy Advisory Committee strives to honor the public trust in licensed marriage and family therapists and provisional licensed marriage and family therapists by setting the standards for ethical practice as described in this code of ethics.

B. Licensees have an obligation to be familiar with this code of ethics and its application to their professional services. They also must be familiar with any applicable ethical codes that govern other licensure that they hold or are responsible for through certification or membership in professional organizations. Lack of awareness or misunderstanding of an ethical standard is not a defense to a charge of unethical conduct.

C. These ethical standards govern the practice of marriage and family therapy and professional functioning of the advisory committee and shall be enforced by the board through the advisory committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:167 (February 2003), LR 41:

§4703. Resolving Ethical Issues

A. The absence of an explicit reference to a specific behavior or situation in the code does not mean that the behavior is ethical or unethical. The standards are not exhaustive. Licensees shall consult with other licensees who are knowledgeable about ethics, with colleagues, with LMFT-approved supervisors, or with appropriate authorities when:

1. - 3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:167 (February 2003), LR 41:

§4705. Responsibility to Clients

A. Licensees advance the welfare of families and individuals. They respect the rights of those persons seeking their assistance and make reasonable efforts to ensure that their services are used appropriately.

B. Licensees provide professional assistance to persons without discrimination on the basis of race, age, ethnicity, socioeconomic status, disability, gender, health status, religion, national origin, or sexual orientation.

C. Licensees obtain appropriate informed consent to therapy or related procedures early in the therapeutic relationship, usually before the therapeutic relationship begins, and use language that is reasonably understandable to clients. The licensee will provide all clients with a statement of practice subject to review and approval by the advisory committee (See §4720, Appendix). The content of informed consent may vary depending upon the licensee's areas of expertise, the client(s) and treatment plan.

1. - 1.c. …

2. When persons, due to age or mental status, are legally incapable of giving informed consent, licensees obtain informed permission from a legally authorized person, if such substitute consent is legally permissible.

D. Licensees are aware of their influential positions with respect to clients, and they avoid exploiting the trust and dependency of such persons. Licensees, therefore, make every effort to avoid conditions and multiple relationships with clients that could impair professional judgment or increase the risk of exploitation. Such relationships include, but are not limited to, business or close personal relationships with a client or the client's immediate family. When the risk of impairment or exploitation exists due to conditions or multiple roles, therapists take appropriate precautions.

E. …

F. Sexual intimacy with former clients is likely to be harmful and is therefore prohibited for two years following the termination of therapy or last professional contact. In an effort to avoid exploiting the trust and dependency of clients, licensees should not engage in sexual intimacy with former clients after the two years following termination or last professional contact. Should licensees engage in sexual intimacy with former clients following two years after termination or last professional contact, the burden shifts to

the licensee to demonstrate that there has been no exploitation or injury to the former client or to the client's immediate family.

G. Licensees comply with applicable laws regarding the reporting of alleged unethical conduct.

H. Licensees do not use their professional relationships with clients to further their own interests.

I. Licensees respect the rights of clients to make decisions and help them to understand the consequences of these decisions. Licensees clearly advise the clients that they have the responsibility to make decisions regarding relationships such as cohabitation, marriage, divorce, separation, reconciliation, custody, and visitation.

J. Licensees continue therapeutic relationships only so long as it is reasonably clear that clients are benefiting from the relationship.

K. Licensees assist persons in obtaining other therapeutic services if the licensee is unable or unwilling, for appropriate reasons, to provide professional help.

L. Licensees do not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment.

M. Licensees obtain written informed consent from clients before videotaping, audio recording, or permitting third-party observation.

N. Licensees, upon agreeing to provide services to a person or entity at the request of a third party, clarify, to the extent feasible and at the outset of the service, the nature of the relationship with each party and the limits of confidentiality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated in accordance with the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:168 (February 2003), LR 41:

§4707. Confidentiality

A. Licensees have unique confidentiality concerns because the client in a therapeutic relationship may be more than one person. Licensees respect and guard the confidences of each individual client.

B. Licensees disclose to clients and other interested parties, as early as feasible in their professional contacts, the nature of confidentiality and possible limitations of the clients' right to confidentiality. Licensees review with clients the circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. Circumstances may necessitate repeated disclosures.

C. Licensees do not disclose client confidences except by written authorization or waiver, or where mandated or permitted by law. Verbal authorization will not be sufficient except in emergency situations, unless prohibited by law, specifically in instances of danger to self or others, suspected child abuse/neglect, elderly abuse/neglect, or disabled adult abuse/neglect. When providing couple, family or group treatment, the licensee does not disclose information outside the treatment context without a written authorization from each individual competent to execute a waiver. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

D. Licensees use client and/or clinical materials in teaching, writing, consulting, research, and public presentations only if a written waiver has been obtained in accordance with this Section, or when appropriate steps have been taken to protect client identity and confidentiality.

E. Licensees store, safeguard, and dispose of client records in ways that maintain confidentiality and in accord with applicable laws and professional standards.

F. Subsequent to the licensee moving from the area, closing the practice, or upon the death of the licensee, a licensee arranges for the storage, transfer, or disposal of client records in ways that maintain confidentiality and safeguard the welfare of clients.

G. Licensees, when consulting with colleagues or referral sources, do not share confidential information that could reasonably lead to the identification of a client, research participant, supervisee, or other person with whom they have a confidential relationship unless they have obtained the prior written consent obtained in accordance with this Section of the client, research participant, supervisee, or other person with whom they have a confidential relationship. Information may be shared only to the extent necessary to achieve the purposes of the consultation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:168 (February 2003), LR 41:

§4709. Professional Competence and Integrity

A. Licensees maintain high standards of professional competence and integrity.

B. Licensees pursue knowledge of new developments and maintain competence in marriage and family therapy through education, training, or supervised experience.

C. Licensees maintain adequate knowledge of and adhere to applicable laws, ethics, and professional standards.

D. Licensees seek appropriate professional assistance for their personal problems or conflicts that may impair work performance or clinical judgment.

E. Licensees do not provide services that create a conflict of interest that may impair work performance or clinical judgment.

F. Licensees, as presenters, teachers, supervisors, consultants and researchers, are dedicated to high standards of scholarship, present accurate information, and disclose potential conflicts of interest.

G. Licensees maintain accurate and adequate clinical and financial records.

H. While developing new skills in specialty areas, licensees take steps to ensure the competence of their work and to protect clients from possible harm. Licensees practice in specialty areas new to them only after appropriate education, training, or supervised experience.

I. Licensees do not engage in sexual or other forms of harassment of clients, students, trainees, supervisees, employees, colleagues, or research subjects.

J. Licensees do not engage in the exploitation of clients, students, trainees, supervisees, employees, colleagues, or research subjects.

K. Licensees do not give to or receive from clients:

1. - 2. …

L. Licensees do not diagnose, treat, or advise on problems outside the recognized boundaries of their competencies.

M. Licensees make efforts to prevent the distortion or misuse of their clinical and research findings.

N. Licensees, because of their ability to influence and alter the lives of others, exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

O. To avoid a conflict of interests, licensees who treat minors or adults involved in custody or visitation actions may not also perform forensic evaluations for custody, residence, or visitation of the minor. The licensee who treats the minor may provide the court or mental health professional performing the evaluation with information about the minor from the licensee's perspective as a treating licensed or provisionally licensed marriage and family therapist, so long as the licensee does not violate confidentiality.

P. Licensees are in violation of this code and subject to revocation or suspension of licensure or provisional licensure or other appropriate action by the board through the advisory committee if they:

1. - 5. …

6. continue to practice marriage and family therapy while no longer competent to do so because they are impaired by physical or mental causes or the abuse of alcohol or other substances; or

7. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:169 (February 2003), LR 41:

§4711. Responsibility to Students and Supervisees

A. Licensees do not exploit the trust and dependency of students and supervisees.

B. Licensees are aware of their influential positions with respect to students and supervisees, and they avoid exploiting the trust and dependency of such persons. Licensees, therefore, make every effort to avoid conditions and multiple relationships that could impair professional objectivity or increase the risk of exploitation. When the risk of impairment or exploitation exists due to conditions or multiple roles, licensees take appropriate precautions.

C. Licensees do not provide therapy to current students or supervisees.

D. Licensees do not engage in sexual intimacy with students or supervisees during the evaluative or training relationship between the therapist and student or supervisee. Should a supervisor engage in sexual activity with a former supervisee, the burden of proof shifts to the supervisor to demonstrate that there has been no exploitation or injury to the supervisee.

E. Licensees do not permit students or supervisees to perform or to hold themselves out as competent to perform professional services beyond their training, level of experience, and competence.

F. Licensees take reasonable measures to ensure that services provided by supervisees are professional.

G. Licensees avoid accepting as supervisees or students those individuals with whom a prior or existing relationship could compromise the licensee's objectivity. When such situations cannot be avoided, therapists take appropriate precautions to maintain objectivity. Examples of such relationships include, but are not limited to, those individuals with whom the licensee has a current or prior sexual, close personal, immediate familial, or therapeutic relationship.

H. Licensees do not disclose supervisee confidences except by written authorization or waiver, or when mandated or permitted by law. In educational or training settings where there are multiple supervisors, disclosures are permitted only to other professional colleagues, administrators, or employers who share responsibility for training of the supervisee. Verbal authorization will not be sufficient except in emergency situations, unless prohibited by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:170 (February 2003), LR 41:

§4713. Responsibility to Research Participants

A. - C. …

D. Investigators respect each participant's freedom to decline participation in or to withdraw from a research study at any time. This obligation requires special thought and consideration when investigators or other members of the research team are in positions of authority or influence over participants. Licensees, therefore, make every effort to avoid multiple relationships with research participants that could impair professional judgment or increase the risk of exploitation.

E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:170 (February 2003), LR 41:

§4715. Responsibility to the Profession

A. Licensees respect the rights and responsibilities of professional colleagues and participate in activities that advance the goals of the profession.

B. Licensees remain accountable to the standards of the profession when acting as members or employees of organizations. If the mandates of an organization with which a licensee is affiliated, through employment, contract or otherwise, conflict with the Code of Ethics, licensees make known to the organization their commitment to the Code of Ethics and attempt to resolve the conflict in a way that allows the fullest adherence to the Code of Ethics.

C. Licensees assign publication credit to those who have contributed to a publication in proportion to their contributions and in accordance with customary professional publication practices.

D. Licensees do not accept or require authorship credit for a publication based on research from a student's program, unless the therapist made a substantial contribution beyond being a faculty advisor or research committee member. Coauthorship on a student thesis, dissertation, or project should be determined in accordance with principles of fairness and justice.

E. Licensees who are the authors of books or other materials that are published or distributed do not plagiarize or fail to cite persons to whom credit for original ideas or work is due.

F. Licensees who are the authors of books or other materials published or distributed by an organization take reasonable precautions to ensure that the organization promotes and advertises the materials accurately and factually.

G. Licensees participate in activities that contribute to a better community and society, including devoting a portion of their professional activity to services for which there is little or no financial return.

H. Licensees are concerned with developing laws and regulations pertaining to marriage and family therapy that serve the public interest, and with altering such laws and regulations that are not in the public interest.

I. Licensees encourage public participation in the design and delivery of professional services and in the regulation of practitioners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors, LR 29:170 (February 2003), LR 41:

§4717. Financial Arrangements

A. Licensees make financial arrangements with clients, third-party payors, and supervisees that are reasonably understandable and conform to accepted professional practices.

B. Licensees do not offer or accept kickbacks, rebates, bonuses, or other remuneration for referrals; fee-for-service arrangements are not prohibited.

C. Prior to entering into the therapeutic or supervisory relationship, licensees clearly disclose and explain to clients and supervisees:

1. - 4. …

D. Licensees give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When such action is taken, licensees will not disclose clinical information.

E. Licensees represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

F. Licensees ordinarily refrain from accepting goods and services from clients in return for services rendered. Bartering for professional services may be conducted only if:

1. - 4. …

G. Licensees may not withhold records under their immediate control that are requested and needed for a client's treatment solely because payment has not been received for past services, except as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:171 (February 2003), LR 41:

§4719. Advertising

A. Licensees engage in appropriate informational activities, including those that enable the public, referral sources, or others to choose professional services on an informed basis.

B. Licensees accurately represent their competencies, education, training, and experience relevant to their practice of marriage and family therapy.

C. Licensees ensure that advertisements and publications in any media (such as directories, announcements, business cards, newspapers, radio, television, Internet, and facsimiles) convey information that is necessary for the public to make an appropriate selection of professional services. Information could include:

1. - 3. …

4. licensed or provisional licensed marriage and family therapist status; and

5. …

D. Licensees do not use names that could mislead the public concerning the identity, responsibility, source, and status of those practicing under that name, and do not hold themselves out as being partners or associates of a firm if they are not.

E. Licensees do not use any professional identification (such as a business card, office sign, letterhead, Internet, or telephone or association directory listing) if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

F. In representing their educational qualifications, licensees list and claim as evidence only those earned degrees:

1. - 3. …

G. Licensees correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the licensee's qualifications, services, or products.

H. Licensees make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading, or deceptive.

I. Licensees do not represent themselves as providing specialized services unless they have the appropriate education, training, or supervised experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors, LR 29:171 (February 2003), LR 41:

§4720. Appendix—Statement of Practice for Licensed Marriage and Family Therapists

A. Each licensed marriage and family therapist/PLMFT in Louisiana shall write a statement of practice incorporating the following information to provide to all clients. Licensees also licensed in other mental health professions may need to add additional information required by that licensure. This statement is subject to review and approval by the advisory committee. Sample statements of practice are available from the board office.

1. …

2. Qualifications:

a. …

b. your LMFT or PLMFT licensure or provisional licensure number, noting that the Board of Examiners is the grantor of your license or provisional license. Include the address and telephone number of the board;

c. …

d. a PLMFT must use this title and include the name and address of his/her approved supervisor and a brief explanation of how supervision affects the therapy provided.

3. - 6.c. …

7. Code of Ethics

a. State that you are required by state law to adhere to The Louisiana Code of Ethics for Licensed and Provisionally Licensed Marriage and Family Therapists; and

b. - c. …

8. Describe the rules governing privileged communication for licensees. You may use your own language, but need to cover all the areas included in the Sample Statement and Subparagraphs 8.a-c.

a. …

b. Include the information that when providing couple, family or group treatment, a licensee cannot:

8.b.i. - 12.

13. End with a general statement indicating that the client(s) have read and understand the statement of practice, providing spaces for the date, client(s)' signatures, and your signature. PLMFTs need to have a line for their LMFT-approved supervisor's signature.

B. …

C. A Licensed Marriage and Family Therapist/ Provisional Licensed Marriage and Family Therapist must have a current copy of his/her statement of practice on file in the board office. A PLMFT must include a copy of his/her statement of practice with each application for or change in supervision. The Code of Ethics can be duplicated for clients and additional copies are available at www.lpcboard.org or from the board office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:172 (February 2003), amended LR 29:2791 (December 2003), LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact on this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a neutral impact on family formation, functioning, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a neutral impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments via U.S. Mail to Mary Alice Olsan, Executive Director, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Baton Rouge, LA 70809 until 4:30 p.m. on February 20, 2015.

Mary Alice Olsan
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: PLPC and PLMFT Regulations; Fee Structure Adjustments/Changes

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an estimated one-time implementation cost to the Board of $25,600 in FY15 that includes the cost of promulgating the rule ($20,000), forms ($300), postage ($3,300), and staff augmentation ($2,000). There will be an estimated annual cost beginning in FY16 of $4,000 that includes forms ($300), postage ($1,700), and staff augmentation ($2,000). All costs will be absorbed within the budget of the Louisiana Licensed Professional Counselors (LPC) Board. There will be no impact on any other state or local governmental agency.

The proposed rule changes codify statutory requirements made necessary by the adoption of Act 173 of the 2013 Regular Session of the Louisiana Legislature, and by Acts 484 and 736 of the 2014 Regular Session. The proposed changes provide for requirements and fees associated with provisional licensure and renewal of provisional licensure as a Provisional Licensed Professional Counselor (PLPC) or a Provisional Licensed Marriage and Family Therapist (PLMFT), for supervisory requirements of provisional licensees, for certain definitions and conditions of professional practice, and for disciplinary actions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is projected to decrease self-generated revenues to the LPC Board by $1,200 in FY15. This projected loss is the result of a reduced "Change/Add Board-Approved Supervisor" fee in the proposed rule from $100 to $50.

The LPC Board projects to receive additional net self-generated revenues of approximately $25,450 in FY16. This calculation is based on a loss of $4,150 in change/add Board-Approved Supervisor fees (83 applicants x $100 vs. 83 applicants x $50) and an increase in the Licensed Professional Counselor (LPC) and Licensed Marriage and Family Therapist (LMFT) renewal fee (from $150 every two years to $170 every two years).

The LPC Board projects to receive additional net self-generated revenues of approximately $29,190 in FY17. This calculation is based on a loss of $4,150 in change/add Board-Approved Supervisor fees (83 applicants x $100 vs. 83 applicants x $50) and an increase in revenue received from the LPC and LMFT renewal fee (from $150 to $170 every two years).

The cost of a provisional license in the proposed rule will be equal to the current cost for registration as a Counselor Intern or Marriage and Family Therapist Intern and will affect the same population. Consequently, no increase or decrease in

revenue is expected for the issuance of provisional licenses. Once current and new registrants have a provisional license, the proposed rule establishes that the provisional license will require renewal every two (2) years for a cost of $85. Beginning in FY18, the LPC Board expects to receive increased self-generated revenue of approximately $76,500 (900 applicants x $85) associated with renewal fees for provisional licensees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons affected by the proposed rule would include those applicants who currently apply for registration as a Counselor Intern or Marriage and Family Therapist (MFT) Intern. This population is primarily composed of recent graduates seeking registration to begin their supervised experience needed for licensure as a LPC or LMFT. The process, amount of documentation needed, and cost to apply for a Provisional LPC (PLPC) or a Provisional LMFT (PLMFT) license will be equal to the current process, amount of documentation needed, and cost to apply for a Counselor Intern or MFT Intern registration. Given that no renewal process or fee exists for a registrant presently, the proposed rule will result in additional costs, time, and documentation for PLPCs and PLMFTs. Specifically, the provisional licensees will have to submit a renewal application and renewal fee of $85 every two (2) years, and documentation of continuing education hours (CEHs) if audited every two (2) years. All PLPCs and PLMFTs must complete 20 CEHs every two (2) years. Ten of the required 20 CEHs may be completed online, thereby potentially reducing travel and associated costs. Also, of the 20 CEHs, 1 ½ hours must be relative to ethics and 1 ½ hours must be relative to diagnosis.

All licensed Professional Counselors and Licensed Marriage and Family Therapists will realize an increase of $20 for the licensure renewal fee every two years, from $150 to $170.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Future PLPCs and PLMFTs, as defined in the proposed rule, will have the same scope of practice as current Counselor Interns and MFT Interns; however, the LPC Board believes PLPCs and PLMFTs will have better employment opportunities with a provisional license rather than registration. The LPC Board surmises that PLPCs and PLMFTs will have a greater chance of obtaining positions in the mental health field than current Counselor Interns and MFT Interns based on the anecdotal feedback submitted to the Board by current Counselor Interns and MFT Interns.

Mary Alice Olsan
Executive Director
1501#036

Evan Brasseux
Legislative
Fiscal Officer/Designee

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Carbon Dioxide Enhanced Oil Recovery (LAC 43:XIX.405)

Editor's Note: This Notice of Intent is being repromulgated due to an error upon submission. The original Notice of Intent can be viewed in the December 20, 2014 edition of the *Louisiana Register* on pages 2692-2694.

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XIX.Subpart 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment is made to implement application requirements for carbon dioxide enhanced oil recovery.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 4. Pollution Control (Class II Injection/Disposal Well Regulations)

Editor's Note: Statewide Order 29-B was originally codified in LAC 43:XIX as §129. In December 2000, §129 was restructured into Chapters 3, 4 and 5. Chapter 3 contains the oilfield pit regulations. Chapter 4 contains the injection/disposal well regulations. Chapter 5 contains the commercial facility regulations. A cross-reference chart in the December 2000 *Louisiana Register*, page 2798, indicates the locations for the rules in each existing Section.

§405. Application Requirements for New Enhanced Recovery Injection and New Saltwater Disposal Wells

A. - B.5.f. …

C. Area of Review for Enhanced Oil Recovery Wells Injecting Carbon Dioxide

1. The area of review (AOR) will be the project area plus the surrounding region where USDWs may be endangered by the carbon dioxide (CO_2) injection activities, at a minimum, no less than 1/4 mile beyond the project area. The AOR will be delineated by a computational model acceptable to the commissioner. For enhanced oil recovery (EOR) projects injecting CO_2 that are permitted as of the effective date of these regulations, the owner or operator of the project has thirty days from the effective date of these regulations to submit a plan to the commissioner to come into compliance with §405.C, D, and E.

2. The owner or operator of a class II EOR CO_2 injection well must submit a plan acceptable to the commissioner to periodically reevaluate the AOR for the proposed CO_2 EOR project and perform corrective action for any identified deficient wells. The AOR must be reevaluated on a frequency not to exceed five years.

3. The owner or operator of the class II EOR CO_2 injection well must identify all penetrations within the defined AOR including active and abandoned wells, underground mines, and any other man-made penetrations that penetrate the confining and injection zones.

4. The owner or operator must determine which wells within the AOR have been constructed and/or plugged in a manner that prevents movement of CO_2 or other fluids that may endanger USDWs, and any wells which may require corrective action to ensure protection of USDWs.

D. Corrective Action for Enhanced Oil Recovery Projects Injecting Carbon Dioxide

1. Owners or operators of class II EOR CO_2 injection wells must perform corrective action on all wells in the area of review that the commissioner has determined to require corrective action.

2. Owners or operators of class II EOR CO_2 injection wells shall submit a corrective action plan acceptable to the commissioner addressing all identified deficiencies within a time specified by the commissioner.

E. Emergency and Remedial Response for Enhanced Oil Recovery Projects Injecting Carbon Dioxide

1. As part of the permit application for a class II EOR CO_2 well, the owner or operator must provide the commissioner with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW during construction, operation, and post-injection site care periods.

2. If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must:

a. take all steps reasonably necessary to identify, characterize, and control any release;

b. notify the commissioner within 24 hours; and

c. Implement the emergency and remedial response plan approved by the commissioner.

3. The owner or operator shall review the emergency and remedial response plan developed under §405.E.1 at least once every five years. Based on this review, the owner or operator shall submit an amended emergency and remedial response plan or demonstrate to the commissioner that no amendment to the emergency and remedial response plan is needed. Any amendments to the emergency and remedial response plan must be approved by the commissioner and are subject to the permit modification requirements at §411, as appropriate. Amended plans or demonstrations shall be submitted to the commissioner as follows:

a. within one year of an area of review reevaluation;

b. following any significant changes to the facility, such as addition of injection or monitoring wells; or

c. when required by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2807 (December 2000), amended LR 41:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted by hand delivery or USPS only, until 4:30 p.m., March 5, 2015, at Office of Conservation, Injection and Mining Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Injection and Mining Division, 617 North Third Street, Room 817, Baton Rouge, LA 70802. Reference Docket No. CON I and M 2014-12 on all correspondence. All inquiries should be directed to Steve Lee at the above addresses or by phone to (225) 342-5569. No preamble was prepared.

Public Hearing

The commissioner of conservation will conduct a public hearing at on Wednesday, February 26, 2015 at 9 a.m., in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Carbon Dioxide Enhanced Oil Recovery

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs to State or local governmental units as a result of the proposed rule change. Application requirements already exist for Enhanced Oil Recovery methods, although none specifically address the use of Carbon Dioxide. The proposed rule seeks to implement application requirements for Carbon Dioxide Enhanced Oil Recovery. Carbon Dioxide Enhanced Oil Recovery is a process in which carbon dioxide is injected into an oil reservoir to push any remaining oil to the top of the reservoir for extraction. It is typically used as a tertiary method of extraction after primary and secondary techniques have extracted the bulk of the oil from a reservoir. As such, the new requirements specific to Carbon Dioxide Enhanced Oil Recovery will be evaluated using existing documents and staff.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The group directly affected by these rules changes will be Exploration and Production (E&P) companies. For those who desire to implement or continue to operate Carbon Dioxide Enhanced Oil Recovery projects, additional information beyond what is already required for other Enhanced Oil Recovery operations may be needed. Currently, Denbury Onshore, LLC and Marlin Resources, L.L.C. are the only companies in the state using these techniques for extraction. The standards listed in the proposed rule change are the standards currently in place, resulting in no additional costs. This may change if other companies enter Louisiana with the intent to perform Carbon Dioxide Oil Recovery, but those impacts cannot be accurately assessed at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment

James H. Welsh	Evan Brasseaux
Commissioner	Staff Director
1501#032	Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Extending Commercial Facilities and
Transfer Stations Setbacks under
Statewide Order No. 29-B (LAC 43:XIX.507)

Editor's Note: This Notice of Intent is being repromulgated due to an error upon submission. The original Notice of Intent can be viewed in the December 20, 2014 edition of the *Louisiana Register* on pages 2694-2695.

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XIX.507 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The current regulations pertaining to commercial facilities and transfer stations require a setback of 500 feet from a residential, commercial, or public building, church, school or hospital. The proposed Rule change adds an additional setback area associated with new commercial facilities and transfer stations in that they may not be located within1,250 feet from a school, hospital or public park. Existing facilities and transfer stations will be exempt from the 1,250 foot rule. The facilities and stations handle the off-site storage, treatment and/or disposal of exploration and production waste generated from drilling and production of oil and gas wells.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 5. Off-Site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells

§507. Location Criteria

A. Commercial facilities and transfer stations may not be located in any area:

1. …

2. where type A and B facilities and transfer stations, Class II disposal wells, storage containers and E and P waste treatment systems and related equipment are located within 500 feet of a residential, commercial, or public building, church, school or hospital or for any proposed new commercial facility or transfer station where publication of the notice of intent or date of the permit application filed with the Office of Conservation is dated after the promulgation date of this rule, where type A and B facilities and transfer stations, class II disposal wells, storage containers and E and P waste treatment systems and related equipment are located within 1,250 feet of a school, hospital, or public park;

3. - 7. …

B. If the owner of the residence or commercial building or the administrative body responsible for the public building, hospital, church or public park waives the distance requirements of §507.A.2 above, such waiver must be in writing, shall contain language acceptable to the commissioner, and shall be included in the permit application.

C. …

D. Any encroachment upon applicable location criteria after the date the notice of intent is published or the application is filed, whichever is earlier, shall not be considered a violation of this Section.

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2817 (December 2000), amended LR 27:1901 (November 2001), LR 29:938 (June 2003), LR 41:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted by USPS or hand delivery only, until 4:30 p.m., March 5, 2015, at Office of Conservation, Environmental Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. ENV 2014-12 on all correspondence. All inquiries should be directed to John Adams at the above addresses or by phone to (225) 342-7889. No preamble was prepared.

Public Hearing

The commissioner of conservation will conduct a public hearing at 9 a.m., February 26, 2015, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

John H. Wells
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Extending Commercial Facilities and Transfer Stations Setbacks under Statewide Order No. 29-B

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated direct material effect on state or local governmental expenditures as a result of the proposed rule change. The proposed rule change adds an additional setback area associated with new commercial facilities and transfer stations in that they may not be located within 1,250 feet from a school, hospital or public park. Existing facilities and transfer stations will be exempt from the 1,250 foot rule. The facilities and stations handle the off-site storage, treatment and/or disposal of exploration and production waste generated from drilling and production of oil and gas wells.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collections of state or local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will only affect the owners of commercial facilities and transfer stations associated with the Exploration and Production (E&P) of oil and gas. There are no anticipated cost increases associated with the rule change and all required documentation will be provided on existing paperwork.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

James H. Welsh	Evan Brasseaux
Commissioner	Staff Director
1501#031	Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development
Office of Operations

Advertising on DOTD-Owned Assets and Sponsorships and Acknowledgment Signs on Public Rights of Way
(LAC 70:III.Chapter 8)

Notice is hereby given in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 48:274.2, that the Department of Transportation and Development, Office of Operations, proposes to amend Chapter 8 to allow signs and plaques on public rights-of-way to acknowledge sponsors who have contributed funds, services or materials for highway related purposes.

Title 70
TRANSPORTATION
Part III. Outdoor Advertising

Chapter 8. Advertising on Department of Transportation and Development owned Assets and Sponsorships on Public Rights of Way

§801. Advertising on Department Assets

A. Purpose

1. The purpose of this Section is to establish a policy within the Department of Transportation and Development (department) for allowing certain limited types of advertising on high-visibility assets owned by the department for the sole purpose of raising revenue to defray some costs of departmental services. This Section shall not apply to advertisements or acknowledgments on roadway rights-of way.

2. The establishment of this policy is not for the purpose of creating a public forum, but is for the purpose of allowing tasteful, visually appealing and inoffensive content for the department's customers while simultaneously supplementing departmental revenues.

3. The display of advertising on departmental assets will not constitute an endorsement by the department of any of the products, services or messages advertised.

B. Requests for Proposals

1. The department may issue requests for proposals in order to secure bidders for advertisement spaces on state-owned assets.

2. The requests for proposals will be reviewed by a committee appointed by the secretary and the most suitable proposal, as determined by the committee, shall be selected.

3. The committee has the discretion to make reasonable choices concerning the types of advertising that may be displayed and shall utilize the criteria which follow in this Rule.

4. The department may limit the number of assets available for advertising displays.

5. The department may limit the term of the contract with the advertiser.

C. Guidelines for Content of Advertising

1. Only commercial advertising will be accepted. It should have content that promotes a commercial transaction.

2. No content promoting illegal activity or obscene, vulgar or offensive conduct shall be allowed.

3. No content that demeans or disparages individuals or groups shall be allowed.

4. No political advertising shall be allowed.

5. No advertising of adult oriented products shall be allowed. Exception: advertising of gambling facilities shall be allowed.

6. The advertising should not be so controversial that it can promote vandalism of advertising materials and associated departmental property.

D. Guidelines for Placement of Advertising on Assets

1. For advertising which requires a power source, such as electronics or LED lighting, the advertiser will be required by the department to submit and maintain detailed plans and provisions. The use of the powered advertising devices shall not have any adverse effect on the safety and functionality of the asset. If the safety and functionality of the asset is compromised after installation, the advertising shall be removed.

2. On ferries or vehicles, advertising may be placed on the inside or the outside of the ferry or vehicle. However, the advertising shall not be erected in such a manner that it impedes current lines of sight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011), amended by the Office of Operations, LR 41:

§803. Sponsorship Agreements and Acknowledgment Signs and Plaques on Public Rights of Way

A. Applicability

1. As provided in Federal Highway Administration Order 5160.1A (FHWA Order 5160.1A), this Section shall apply to any street or roadway that is open to public travel.

B. Purpose

1. The purpose of this Section is to allow the use of signs and plaques to acknowledge a provision of highway-related services under both corporate and volunteer sponsorship programs while maintaining highway safety and minimizing driver distraction.

C. All sponsorship agreements and acknowledgment signs and acknowledgment plaques shall comply with the manual on uniform traffic control devices for streets and

highways (MUTCD), published by the Federal Highway Administration (FHWA) under 23 CFR Part 655, Subpart F, and shall be administered pursuant to FHWA Order Number 5160.1A.

D. General Principles

1. If federal-aid funds were used within the corridor or facility for which sponsorship is being provided, then monetary contributions received as part of sponsorship agreements shall be spent only for highway purposes. If federal-aid funds were not used within the corridor or facility for which sponsorship is being provided, then, where practical, monetary contributions received as part of sponsorship agreements should be used only for highway purposes.

2. Agreements shall contain a provision requiring sponsors to comply with state laws prohibiting discrimination based on race, religion, color, age, sex, national origin, and all other applicable laws, rules and regulations.

3. All sponsorship agreements involving the interstate highway system are contingent upon the approval of the FHWA division administrator.

4. Sponsorship agreements shall include a termination clause giving the department the right to end such agreement at any time based on any of the following:

a. safety concerns;

b. interference with the free and safe flow of traffic;

c. a determination that the sponsorship agreement or acknowledgement is not in the public interest;

d. for the convenience of the department.

5. The department will maintain full ownership of any sponsored product, event, and asset.

6. The department shall maintain all authorship rights to publications.

7. The sponsoring organization is not permitted to charge fees for state owned products, events, or access to state property.

8. The sponsoring organization is not permitted to alter publications or other property without the written permission of the department.

E. Sponsorship Contractors

1. In some cases, the department may issue requests for proposals in order to secure bidders for the administration of the department's sponsorship program. Payment for such services may be based upon revenues or in-kind services generated from sponsors for highway related services.

2. Sponsorship contracts shall require the prior approval of the FHWA if the agreement relates to the Interstate highway system.

F. Eligibility Requirements

1. The department recognizes that entering into a sponsorship agreement with an external entity does not constitute an endorsement of the entity or its services and products but does imply an affiliation. Such affiliation can affect the reputation of the state among its citizens and its ability to govern effectively. Therefore, any proposal for sponsorship of a state program or service in which the involvement of an outside entity compromises the public's perception of the state's neutrality or its ability to act in the public interest will be rejected.

2. The department shall consider the following criteria before entering into a sponsorship agreement:

a. whether the sponsorship is consistent with the goals, objectives, and mission of the department and the current priorities that support these goals, objectives, and mission; and

b. the importance of the sponsorship to the mission of the department; and

c. the extent and prominence of the public display of sponsorship; and

d. aesthetic characteristics of the public display of sponsorship; and

e. the level of support provided by the sponsor; and

f. the cooperation necessary from the department to implement the sponsorship; and

g. any inconsistencies between the department's policies and the known policies of the potential sponsor; and

h. other factors that might undermine public confidence in the department's impartiality or interfere with the efficient delivery of department services or operations, including, but not limited to, current or potential conflicts of interest, or perception of a conflict of interest, between the sponsor and department employees, officials, or affiliates; and the potential for the sponsorship to tarnish the state's standing among its citizens or otherwise impair the ability of the state to govern its citizens.

3. The amount of the approved financial or in-kind support is at the discretion of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Operations, LR 41:

§805. Advertising and Sponsorship Standards Committee

A. The secretary shall establish a three member Advertising and Sponsorship Standards Committee. Such committee shall be independent and its determinations shall constitute final departmental determinations.

B. The committee shall review:

1. all requests for proposals;

2. the content of all advertisements;

3. all sponsorship agreements; and

4. the content of all acknowledgments signs and plaques to determine consistency with department policies and objectives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Operations, LR 41:

§807. Guidelines for Placement of Advertising on Assets

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011), repealed by the Office of Operations, LR 41:

§809. Advertising Standards Committee

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:3533 (December 2011), repealed by the Office of Operations, LR 41:

Family Impact Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. the implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family;
2. the implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children;
3. the implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family;
4. the implementation of this proposed Rule will have no known or foreseeable effect on the family earnings and family budget;
5. the implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children;
6. the implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or local government to perform this function.

Poverty Impact Statement

The implementation of this proposed Rule should not have any known or foreseeable impact on child, individual, or family poverty in relation to individual or community asset development as defined by R.S. 49:973. Specifically:

1. the implementation of this proposed Rule will have no known or foreseeable effect on household income, assets, and financial security;
2. the implementation of this proposed Rule will have no known or foreseeable effect on early childhood development and preschool through postsecondary education development;
3. the implementation of this proposed Rule will have no known or foreseeable effect on employment and workforce development;
4. the implementation of this proposed Rule will have no known or foreseeable effect on taxes and tax credits;
5. the implementation of this proposed Rule will have no known or foreseeable effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

The implementation of this proposed rule on small businesses, as defined in the Regulatory Flexibility Act, has been considered. The proposed Rule is not expected to have a significant adverse impact on small businesses. The department, consistent with health, safety, environmental and economic welfare factors, has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of the proposed statutes while minimizing the adverse impact of the Rule on small businesses.

Provider Impact Statement

The implementation of this proposed Rule does not have any known or foreseeable impact on a provider as defined by House Concurrent Resolution No. 170 of the 2014 Regular Session of the Louisiana State Legislature. Specifically:

1. the implementation of this proposed Rule does not have any known or foreseeable impact on the staffing level requirements or qualifications required to provide the same level of service;
2. the implementation of this proposed Rule does not have any known or foreseeable impact on the total direct and indirect effect on the cost to a provider to provide the same levels of service;
3. the implementation of this proposed Rule does not have any known or foreseeable impact on the overall effect on the ability of a provider to provide the same level of service.

Public Comments

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent to Kevin Reed, Ferry Administrator, Office of Operations, Department of Transportation and Development, P.O. Box 94245, Baton Rouge, LA 70804-9245, telephone (225) 379-1916.

Sherri H. LeBas
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Advertising on DOTD-Owned Assets and Sponsorships and Acknowledgment Signs on Public Rights of Way

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change establishes guidelines for the implementation of a program authorizing the Department of Transportation and Development (department) to enter into agreements with private sponsors for the placement of acknowledgment signs and plaques on public rights-of-way in exchange for funds, services or materials to be used for highway purposes. The department intends to hire a contractor to manage the sponsorship program. The contractor will be responsible for finding eligible sponsors and for all costs associated with installation, maintenance and removal of the acknowledgment signs and plaques. The contractor will retain a percentage of the total annual revenues generated (estimated to be between 25 and 30 percent, or between $500,000 and $640,000) as payment for services. The proposed rule will not result in any SGF expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is anticipated to increase revenue collections for the department. It is estimated that the department will generate fees and self-generated revenues of approximately $500,000 in the first year and $1,500,000 annually in future years after contract costs. This estimate is based upon information contained in a report prepared by Alvarez and Marsal Public Sector Services, LLC., entitled Governmental Efficiencies Management Support (GEMS) Transportation and Development Assessment / Plan.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to directly affected persons or non-governmental groups as a result of this proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Acknowledgment signs and plaques may increase business activity through name recognition for commercial sponsors and may generate goodwill for both commercial and private sponsors. All businesses affected by this proposed rule change will be affected equitably.

Eric Kalivoda, Ph.D., P.E.
Deputy Secretary
1501#025

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Resident Game Hunting Season and Game Birds and Animals, General and Wildlife Management Area Provisions and Turkey Hunting Provisions, Areas, Seasons, and Bag Limits
(LAC 76:XIX.Chapter 1)

The Wildlife and Fisheries Commission has amended the general and wildlife management area rules and regulations for the 2015-2016 season, the resident game hunting season for the 2015-2017 hunting seasons, the general and wildlife management area rules and regulations for the turkey season, the turkey hunting areas, and seasons, and bag limits for the 2016 turkey season.

Title 76
WILDLIFE AND FISHERIES
Part XIX. Hunting and WMA Regulations
Chapter 1. Resident Game Hunting Season
§101. General

A. The resident game hunting season regulations are hereby adopted by the Wildlife and Fisheries Commission. A complete copy of the regulation pamphlet may be obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), LR 30:1493 (July 2004), LR 31:1627 (July 2005), LR 32:1253 (July 2006), LR 33:1399 (July 2007), LR 34:1447 (July 2008), LR 35:1278 (July 2009), LR 36:1580 (July 2010), LR 37:2206 (July 2011), LR 38:1747 (July 2012), LR 40:1534 (August 2014), LR 41:

§103. Resident Game Birds and Animals

A. Shooting Hours—one-half hour before sunrise to one-half hour after sunset.

B. Consult Regulation Pamphlet for Seasons or Specific Regulations on Wildlife Management Areas or Specific Localities

Species	Season Dates	Daily Bag Limit	Possession Limit
Quail	OPENS: 3rd Saturday of November CLOSES: Last Day of February	10	20
Rabbit and Squirrel	OPENS: 1st Saturday of October CLOSES: Last Day of February	8	16
Squirrel *	OPENS: 1st Saturday of May for 23 days	3	6
Deer 2015-17	See Schedule	1 antlered and 1 antlerless (when legal)	6/season (not to exceed 3 antlered deer or 4 antlerless deer)

*NOTE: Spring squirrel season is closed on the Kisatchie National Forest, National Wildlife Refuges, U.S. Army Corps of Engineers property. Some state wildlife management areas will be open, check WMA season schedule.

C. Deer Hunting Schedule 2015-2016

Area	Archery	Primitive Firearms (All Either Sex Except as Noted)	Still Hunt (No dogs allowed)	With or Without Dogs
1	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: 2nd Sat. of Nov. CLOSES: Fri. after 2nd Sat. of Nov. OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan.	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec. OPENS: Mon. after 1st Sat. of Jan. CLOSES: next to last Sun. of Jan.	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Sun. after 1st Sat. of Jan.
2	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: Next to last Sat. of Oct. CLOSES: Fri. before last Sat. of Oct. OPENS: Mon. after the last day of Modern Firearm Season in Jan. CLOSES: After 7 days.	OPENS: Last Sat. of Oct. CLOSES: Tues. before 2nd Sat. of Dec. in odd numbered years and on Wed. during even numbered years EXCEPT when there are 5 Sats. in Nov. and then it will close on the Tues. in odd numbered years or Wed. during even numbered years before the 1st Sat. of Dec.	OPENS: Wed. before the 2nd Sat. of Dec. in odd numbered years and on Thurs. during even numbered years EXCEPT when there are 5 Sats. in Nov., then it will open on the Wed. before the 1st Sat. of Dec. on odd years and Thurs. during even numbered years CLOSES: 40 days after opening in odd numbered years or 39 days after opening in even numbered years

Area	Archery	Primitive Firearms (All Either Sex Except as Noted)	Still Hunt (No dogs allowed)	With or Without Dogs
3	OPENS: 3rd Sat. of Sept. CLOSES: Jan. 15	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct. OPENS: Mon. after Thanksgiving Day CLOSES: Fri. before 1st Sat. of Dec.	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after Thanksgiving Day OPENS: 1st Sat. of Dec. CLOSES: After 37 days	
4	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: 2nd Sat. of Nov. CLOSES: Fri. after 2nd Sat. of Nov.(EITHER SEX) OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan. (EITHER SEX FOR 1ST 7 DAYS, BUCKS ONLY FOR REMAINDER OF SEASON)	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: Mon. after 1st Sat. of Jan. CLOSES: next to last Sun. of Jan. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 3rd Sat. of Nov. CLOSES: Sun. after 3rd Sat. of Nov. (EITHER SEX) OPENS: Friday after Thanksgiving CLOSES: Sun. after Thanksgiving. (EITHER SEX) OPENS: 1st Sat. of Dec. CLOSES: Sun. after 1st Sat. of Dec. (EITHER SEX) OPENS: 2nd Sat. of Jan. CLOSES: Sun. after 2nd Sat. of Jan. (EITHER SEX) OPENS: 3rd Sat. of Jan. CLOSES: Sun. after 3rd Sat. of Jan. (EITHER SEX)	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Sun. after 1st Sat. of Jan. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 2nd Sat. of Dec. CLOSES: Sun. after 2nd Sat. of Dec. (EITHER SEX) OPENS: 3rd Sat. of Dec. CLOSES: Sun. after 3rd Sat. of Dec. (EITHER SEX) OPENS: 4th Sat. of Dec. CLOSES: Sun. after 4th Sat. of Dec. (EITHER SEX) OPENS: 1st Sat. of Jan. CLOSES: Sun. after 1st Sat. of Jan. (EITHER SEX)
5	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: 2nd Sat. of Nov. CLOSES: Fri. before 3rd Sat. of Nov. (EITHER SEX) OPENS: Day after the close of Modern Firearm Season CLOSES: After 7 consecutive days (EITHER SEX)	OPENS: Day after Thanksgiving Day CLOSES: 2nd Sun. of Jan.(BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: Fri. after Thanksgiving CLOSES: Sun. after Thanksgiving (EITHER SEX) OPENS: 1st Sat. of Dec. CLOSES: 1st Sun. of Dec. (EITHER SEX)	
6	OPENS: 1st day of Oct. CLOSES: Feb. 15 (1st 15 days are BUCKS ONLY)	OPENS: 2nd Sat. of Nov. CLOSES: Fri. before 3rd Sat. of Nov. OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan.	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec.	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Next to last Sun. of Jan.
7	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct.(EITHER SEX) OPENS: 1st Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Nov. (BUCKS ONLY).	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after 3rd Sat. of Oct. (EITHER SEX) OPENS: Mon. after 3rd Sun. of Oct. CLOSES: Fri Before 1st Sat. of Nov. (BUCKS ONLY) OPENS: 2nd Sat of Nov. CLOSES: Sun. after Thanksgiving (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 3rd Sat. of Nov. CLOSES: Sun. after 3rd Sat. of Nov. (EITHER SEX) OPENS: Fri. after Thanksgiving. CLOSES: Sun. after Thanksgiving. (EITHER SEX)	OPENS: Mon. after Thanksgiving Day CLOSES: After 35 days(BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: Sat. after Christmas. CLOSES: Sun. after Christmas. (EITHER SEX)

Area	Archery	Primitive Firearms (All Either Sex Except as Noted)	Still Hunt (No dogs allowed)	With or Without Dogs
8	OPENS: 3rd Sat. of Sept. CLOSES: Jan. 15	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct. OPENS: Mon. after Thanksgiving Day CLOSES: Fri. before 1st Sat. of Dec.	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after Thanksgiving Day.	OPENS: 1st Sat. of Dec. CLOSES: After 37 days.
9	OPENS: 1st day of Oct. CLOSES: Feb. 15 (1st 15 days are BUCKS ONLY)	OPENS: 2nd Sat. of Nov. CLOSES: Fri. before 3rd Sat. of Nov.(BUCKS ONLY) OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan.(EITHER SEX 1ST 7 DAYS, BUCKS ONLY FOR REMAINDER OF SEASON)	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: Fri. after Thanksgiving Day. CLOSES: Sun. after Thanksgiving day. (EITHER SEX)	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Next to last Sun. of Jan. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 2nd Sat. of Dec. CLOSES: Sun. after 2nd Sat. of Dec. (EITHER SEX) OPENS: Sat. after Christmas. CLOSES: Sun. after Christmas. (EITHER SEX) OPENS: 2nd Sat. in Jan. CLOSES: Sun. after 2nd Sat. in Jan. (EITHER SEX)
10	OPENS: 3rd Sat. of Sept. CLOSES: Jan. 15	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct. (EITHER SEX) OPENS: Mon. after Thanksgiving Day CLOSES: Fri. before 1st Sat. of Dec. (BUCKS ONLY)	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after Thanksgiving Day(BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 1st Sat. of Dec. CLOSES: After 37 days(BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 3rd Sat. of Oct. CLOSES: Sun. after 3rd Sat. in Oct. (EITHER SEX) OPENS: 2nd Sat. of Nov. CLOSES: Sun. after 2nd Sat. of Nov. (EITHER SEX) OPENS: Fri. after Thanksgiving. CLOSES: Sun. after Thanksgiving. (EITHER SEX) OPENS: Sat. after Christmas. CLOSES: Sun. after Christmas. (EITHER SEX)	

D. Deer Hunting Schedule 2016-2017

Area	Archery	Primitive Firearms (All Either Sex Except as Noted)	Still Hunt (No dogs allowed)	With or Without Dogs
1	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: 2nd Sat. of Nov. CLOSES: Fri. after 2nd Sat. of Nov. OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan.	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec. OPENS: Mon. after 1st Sat. of Jan. CLOSES: next to last Sun. of Jan.	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Sun. after 1st Sat. of Jan.

Area	Archery	Primitive Firearms (All Either Sex Except as Noted)	Still Hunt (No dogs allowed)	With or Without Dogs
2	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: Next to last Sat. of Oct. CLOSES: Fri. before last Sat. of Oct. OPENS: Mon. after the last day of Modern Firearm Season in Jan. CLOSES: After 7 days.	OPENS: Last Sat. of Oct. CLOSES: Tues. before 2nd Sat. of Dec. in odd numbered years and on Wed. during even numbered years EXCEPT when there are 5 Sats. in Nov. and then it will close on the Tues. in odd numbered years or Wed. during even numbered years before the 1st Sat. of Dec.	OPENS: Wed. before the 2nd Sat. of Dec. in odd numbered years and on Thurs. during even numbered years EXCEPT when there are 5 Sats. in Nov., then it will open on the Wed. before the 1st Sat. of Dec. on odd years and Thurs. during even numbered years CLOSES: 40 days after opening in odd numbered years or 39 days after opening in even numbered years
3	OPENS: 3rd Sat. of Sept. CLOSES: Jan. 15	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct. OPENS: Mon. after Thanksgiving Day CLOSES: Fri. before 1st Sat. of Dec.	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after Thanksgiving Day OPENS: 1st Sat. of Dec. CLOSES: After 37 days	
4	OPENS: 1st day of Oct. CLOSES: Last day of Jan.	OPENS: 2nd Sat. of Nov. CLOSES: Fri. after 2nd Sat. of Nov. OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan. (EITHER SEX FOR 1ST 7 DAYS, BUCKS ONLY FOR REMAINDER OF SEASON)	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: Mon. after 1st Sat. of Jan. CLOSES: next to last Sun. of Jan. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 3rd Sat. of Nov. CLOSES: Sun. after 3rd Sat. of Nov. (EITHER SEX) OPENS: Friday after Thanksgiving CLOSES: Sun. after Thanksgiving. (EITHER SEX) OPENS: 1st Sat. of Dec. CLOSES: Sun. after 1st Sat. of Dec. (EITHER SEX) OPENS: 2nd Sat. of Jan. CLOSES: Sun. after 2nd Sat. of Jan. (EITHER SEX) OPENS: 3rd Sat. of Jan. CLOSES: Sun. after 3rd Sat. of Jan. (EITHER SEX)	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Sun. after 1st Sat. of Jan. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 2nd Sat. of Dec. CLOSES: Sun. after 2nd Sat. of Dec. (EITHER SEX) OPENS: 3rd Sat. of Dec. CLOSES: Sun. after 3rd Sat. of Dec. (EITHER SEX) OPENS: 4th Sat. of Dec. CLOSES: Sun. after 4th Sat. of Dec. (EITHER SEX) OPENS: 1st Sat. of Jan. CLOSES: Sun. after 1st Sat. of Jan. (EITHER SEX)
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Area	Archery	Primitive Firearms (All Either Sex Except as Noted)	Still Hunt (No dogs allowed)	With or Without Dogs
8	OPENS: 3rd Sat. of Sept. CLOSES: Jan. 15	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct. OPENS: Mon. after Thanksgiving Day CLOSES: Fri. before 1st Sat. of Dec.	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after Thanksgiving Day.	OPENS: 1st Sat. of Dec. CLOSES: After 37 days.
9	OPENS: 1st day of Oct. CLOSES: Feb. 15 (1st 15 days are BUCKS ONLY)	OPENS: 2nd Sat. of Nov. CLOSES: Fri. before 3rd Sat. of Nov.(BUCKS ONLY) OPENS: Mon. after the next to last Sun. of Jan. CLOSES: Last day of Jan.(EITHER SEX 1ST 7 DAYS, BUCKS ONLY FOR REMAINDER OF SEASON)	OPENS: Sat. before Thanksgiving Day EXCEPT when there are 5 Sats. in Nov., then it will open on the 3rd Sat. of Nov. CLOSES: Fri. before 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov. and then it will close on the Fri. before the 1st Sat. of Dec. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: Fri. after Thanksgiving Day. CLOSES: Sun. after Thanksgiving day. (EITHER SEX)	OPENS: 2nd Sat. of Dec. EXCEPT when there are 5 Sats. in Nov., then it will open on the 1st Sat. of Dec. CLOSES: Next to last Sun. of Jan. (BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 2nd Sat. of Dec. CLOSES: Sun. after 2nd Sat. of Dec. (EITHER SEX) OPENS: Sat. after Christmas. CLOSES: Sun. after Christmas. (EITHER SEX) OPENS: 2nd Sat. in Jan. CLOSES: Sun. after 2nd Sat. in Jan. (EITHER SEX)
10	OPENS: 3rd Sat. of Sept. CLOSES: Jan. 15	OPENS: 2nd Sat. of Oct. CLOSES: Fri. before 3rd Sat. of Oct. (EITHER SEX) OPENS: Mon. after Thanksgiving Day CLOSES: Fri. before 1st Sat. of Dec. (BUCKS ONLY)	OPENS: 3rd Sat. of Oct. CLOSES: Sun. after Thanksgiving Day(BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 1st Sat. of Dec. CLOSES: After 37 days(BUCKS ONLY UNLESS EITHER SEX SEASON IS IN PROGRESS) OPENS: 3rd Sat. of Oct. CLOSES: Sun. after 3rd Sat. in Oct. (EITHER SEX) OPENS: 2nd Sat. of Nov. CLOSES: Sun. after 2nd Sat. of Nov. (EITHER SEX) OPENS: Fri. after Thanksgiving. CLOSES: Sun. after Thanksgiving. (EITHER SEX) OPENS: Sat. after Christmas. CLOSES: Sun. after Christmas. (EITHER SEX)	

E. Farm-raised white-tailed deer on supplemented shooting preserves:

1. archery, firearm, primitive firearms—October 1-January 31 (either-sex).

F. Exotics on supplemented shooting preserves:

1. either sex—no closed season.

G. Spring squirrel hunting:

1. season dates—opens 1st Saturday of May for 23 days;

2. closed areas:

a. Kisatchie National Forest, national wildlife refuges, and U.S. Army Corps of Engineers property and all WMAs except as provided in Paragraph 3 below;

3. wildlife management area schedule—opens first Saturday of May for nine days on all WMAs except Fort Polk, Peason Ridge, Camp Beauregard, Pass-a-Loutre and Salvador. Dogs are allowed during this season for squirrel hunting. Feral hogs may be taken on wildlife management areas during this season;

4. limits—daily bag limit is three and possession limit is nine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:109(B) and R.S. 56:141(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), repromulgated LR 29:1521 (August 2003), LR 30:1494 (July 2004), LR 31:1627 (July 2005), LR 32:1254 (July 2006), LR 33:115 (January 2007), LR 33:1399 (July 2007), LR 34:1447 (July 2008), LR 35:1280 (July 2009), LR 35:2856 (December 2009), LR 36:1580 (July 2010), LR 37: 2207 (July 2011), LR 38:1747 (July 2012), LR 40:1535 (August 2014), LR 41:

§111. General and Wildlife Management Area Hunting Rules and Regulations

A. Hunting Seasons and Wildlife Management Area (WMA) Regulations

1. The rules and regulations contained within this digest have been officially approved and adopted by the Wildlife and Fisheries Commission under authority vested by sections 115 and 116 of title 56 of the *Louisiana Revised Statutes* of 1950 and are in full force and effect in conjunction with all applicable statutory laws. The secretary of the Department of Wildlife and Fisheries (LDWF) has the authority to close or alter seasons in emergency situations in order to protect fish and wildlife resources.

2. Pursuant to section 40.1 of title 56 of the *Louisiana Revised Statutes* of 1950, the Wildlife and Fisheries Commission has adopted monetary values which are assigned to all illegally taken, possessed, injured or destroyed fish, wild birds, wild quadrupeds and other wildlife and aquatic life. Anyone taking, possessing, injuring or destroying fish, wild birds, wild quadrupeds and other wildlife and aquatic life shall be required to reimburse the LDWF a sum of money equal to the value of the wildlife illegally taken, possessed, injured or destroyed. This monetary reimbursement shall be in addition to any and all criminal penalties imposed for the illegal act.

B. Resident Game Birds and Animals

1. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

C. Other Season Dates

1. Turkey. Please refer to turkey regulations.

2. Raccoon and Opossum. No closed season. Raccoon and opossum can be taken at night by one or more licensed hunters with one or more dogs and one .22 caliber or smaller rimfire firearm. A licensed hunter may take raccoon or opossum with .22 caliber or smaller rimfire firearm, .36 caliber or smaller muzzleloader rifle or shotgun during daylight hours. Hunting from boats or motor vehicles is prohibited. No bag limit for nighttime or daytime raccoon or opossum hunting during the open trapping season except on certain WMAs as listed. The remainder of the year, the raccoon and opossum bag limit for daytime or nighttime is two per person per day or night. No one who hunts raccoons or opossums as prescribed above shall pelt during the closed trapping season nor sell skins or carcasses of raccoons and opossums taken during the open trapping season unless he is the holder of a valid trapping license which shall be required in addition to his basic hunting license. Pelting or selling carcasses is illegal during closed trapping season.

3. Nutria. On WMAs and private property nutria may be taken recreationally by licensed hunters from September 1 through the last day of February, during legal shooting hours by any legal hunting method with a daily limit of five. Except nutria may be taken on Atchafalaya Delta, Salvador/Timken, Pointe-Aux-Chenes and Pass-a-Loutre WMAs from September 1 to March 31. When taken with a shotgun, non-toxic shot must be used. On WMAs during waterfowl seasons, nutria may be taken only with the use of shotguns with shot no larger than F steel, and during gun deer seasons, anyone taking nutria must display 400 square inches of "hunter orange" and wear a "hunter orange" cap or hat. Recreational nutria hunters must remove each nutria carcass in whole condition from the hunting area, except that nutria may be gutted. Possession of detached nutria parts, including nutria tails, by recreational hunters is illegal. Nutria harvested recreationally may not be pelted nor may such nutria or any nutria parts from recreationally taken nutria be sold, including the tail. Trespassing upon private property for the purpose of taking nutria or other furbearing animals is punishable by fines and possible jail time (R.S. 56:265). The Coastwide Nutria Control Program is a separate program and is in no way related to the nutria recreational season. For questions on the Coastwide Nutria Control Program, call the New Iberia office (337) 373-0032.

4. Blackbirds and Crows. The season for crows shall be September 1 through January 1 with no limit; however crows, blackbirds, cowbirds and grackles may be taken year round during legal shooting hours if they are depredating or about to depredate upon ornamentals or shade trees, agricultural crops, livestock, wildlife, or when concentrated in such numbers as to cause a health hazard. Louisiana has determined that the birds listed above are crop depredators and that crows have been implicated in the spread of the West Nile virus in humans. As described in 50 CFR Part 21, non-toxic shot must be used for the take of crows, blackbirds, cowbirds and grackles under the special depredation order. In addition an annual report has to be submitted to the U.S. Fish and Wildlife Service for those that participate in the take of these species.

5. Pheasant. Open concurrently with the quail season; no limit.

6. Falconry. Special permit required. Resident and migratory game species may be taken except turkeys. Seasons and bag limits are the same as for statewide and WMA regulations. Refer to LAC 76:V.301 for specific falconry rules.

7. Licensed Hunting Preserve, October 1-April 30, Pen-Raised Birds Only. No limit entire season. Refer to LAC 76:V.305 for specific hunting preserve rules.

8. Deer Management Assistance Program (DMAP). Refer to LAC 76:V.111 for specific DMAP rules. Deer management assistance tags must be in the possession of the hunter in order to harvest an antlerless deer. The tag shall be attached through the hock in such a manner that it cannot be removed before the deer is transported (including those taken on either-sex days and those taken with approved archery equipment or primitive firearms). Failure to do so is a violation of R.S. 56:115. Deer harvested on property enrolled in DMAP do not count in the season or daily bag limit for hunters when legally tagged with DMAP tags. Failing to follow DMAP rules and regulations may result in suspension and cancellation of the program on those lands involved.

9. Farm Raised White-tailed Deer and Exotics on Licensed Supplemented Shooting Preserves

a. Definitions

Exotics—for purposes of this Section means any animal of the family *Bovidae* (except the *Tribe Bovini* [cattle]) or *Cervidae* which is not indigenous to Louisiana and which is confined on a supplemented hunting preserve. *Exotics* shall include, but are not limited to, fallow deer, red deer, elk, sika deer, axis deer, and black buck antelope.

Hunting—in its different tenses and for purposes of this Section means to take or attempt to take, in accordance with R.S. 56:8.

Same as Outside—for purposes of this Section means hunting on a supplemented hunting preserve must conform to applicable statutes and rules governing hunting and deer hunting, as provided for in title 56 of the *Louisiana Revised Statutes* and as established annually by the Wildlife and Fisheries Commission.

Supplemented Hunting Preserve—for purposes of this Section means any enclosure for which a current farm-raising license has been issued by the Department of

Agriculture and Forestry (LDAF) with concurrence of the LDWF and is authorized in writing by the LDAF and LDWF to permit hunting.

White-Tailed Deer—for purposes of this Rule means any animal of the species *Odocoileus virginianus* which is confined on a supplemented hunting preserve.

b. Seasons:

i. farm-raised white-tailed deer: consult the regulations pamphlet;

ii. exotics: year round.

c. Methods of take:

i. white-tailed deer: same as outside;

ii. exotics: exotics may be taken with traditional bow, compound bow and crossbow or any bow drawn, held or released by mechanical means; shotguns not larger than 10 gauge, loaded with buckshot or rifled slug; handguns and rifles no smaller than .22 caliber centerfire; or muzzleloading rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, using black powder or an approved substitute only, and using ball or bullet projectile, including saboted bullets only and other approved primitive firearms.

d. Shooting hours:

i. white-tailed deer: same as outside;

ii. exotics: one-half hour before sunrise to one-half hour after sunset.

e. Bag limit:

i. farm-raised white-tailed deer: same as outside;

ii. exotics: no limit.

f. Hunting licenses:

i. white-tailed deer: same as outside;

ii. exotics: no person shall hunt any exotic without possessing a valid basic and big game hunting license.

g. Tagging. White-tailed deer and exotics: each animal shall be tagged in the left ear or left antler immediately upon being killed and before being moved from the site of the kill with a tag provided by the LDAF. The tag shall remain with the carcass at all times.

10. Bobcat. No person other than the holder of a valid big game license may take or possess bobcat, except licensed trappers who may take or possess bobcat during the open trapping season. A big game licensee shall only take bobcat during the time period from one-half hour before sunrise to one-half hour after sunset with approved archery equipment, shotgun, muzzleloader or centerfire firearm. A big game licensee shall not take more than one bobcat per calendar year. This regulation applies only to property that is privately owned, state WMAs, Kisatchie National Forest, and the Bayou des Ourses, Bodcau, Bonnet Carre, and Indian Bayou tracts owned by the Corps of Engineers, but does not apply to state wildlife refuges, or other federally owned refuges and lands. On state WMAs and Kisatchie National Forest, the take of bobcat is restricted to those open seasons on the WMAs which require the respective legal weapons noted above.

D. Hunting-General Provisions

1. A basic resident or non-resident hunting license is required of all persons to hunt, take, possess or cause to be transported by any other person any wild bird or quadruped. See information below for exceptions.

2. No person born on or after September 1, 1969, shall hunt unless that person has first been issued a certificate of satisfactory completion of a firearm and hunter education course approved by the department, except any active or veteran member of the United States armed services or any POST-certified law enforcement officer. Application for the exemption shall be filed in person at the LDWF main office building in the city of Baton Rouge. A person under sixteen years of age may hunt without such certificate if he/she is accompanied by and is under the direct supervision of a person who was born before September 1, 1969, and has a valid hunting license or who is eighteen years of age or older and has proof of successful completion of a firearm and hunter education course approved by the department.

3. A big game license is required in addition to the basic hunting license to hunt, take, possess or cause to be transported any deer. A separate wild turkey license is required in addition to the basic hunting license and the big game license to hunt, take, possess or cause to be transported any turkey.

4. Taking game quadrupeds or birds from aircraft or participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

5. Methods of Taking Resident Game Birds and Quadrupeds

a. It is illegal to intentionally feed, deposit, place, distribute, expose, scatter, or cause to be fed, deposited, placed, distributed, exposed, or scattered raw sweet potatoes to wild game quadrupeds.

b. Use of a traditional bow, compound bow and crossbow or any bow drawn, held or released by mechanical means or a shotgun not larger than a 10 gauge fired from the shoulder shall be legal for taking all resident game birds and quadrupeds. Also, the use of a handgun, rifle and falconry (special permit required) shall be legal for taking all game species except turkey. It shall be illegal to hunt or take squirrels or rabbits at any time with a breech-loaded rifle or handgun larger than .22 caliber, any centerfire firearm, or a muzzleloading firearm larger than .36 caliber. It shall be legal to hunt or take squirrels, rabbits, and outlaw quadrupeds with air rifles.

c. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs is prohibited when or where a still hunting season or area is designated, and will be strictly enforced. Shotguns larger than 10 gauge or capable of holding more than three shells shall be prohibited. Plugs used in shotguns must be incapable of being removed without disassembly. Refer to game schedules contained within these regulations for specific restrictions on the use of firearms and other devices.

d. No person shall take or kill any game bird or wild quadruped with a firearm fitted with an infrared sight, laser sight, or except as provided in R.S. 56:116(A)(8) any sighting device which projects a beam of light to the target or otherwise electronically illuminates the target, or device specifically designed to enhance vision at night [R.S. 56:116.1.B(3)].

6. Nuisance Animals. Landowners or their designees may remove beaver and nutria causing damage to their property without a special permit. Water set traps and

firearms may be used to remove beaver; nutria may be removed by any means except that nutria cannot be taken by the use of headlight and gun between the hours of sunset and sunrise. With a special permit issued by the LDWF, beavers may be taken between one-half hour after official sunset to one-half hour before official sunrise for a period of three consecutive calendar evenings from the effective date of the permit. Any nuisance beaver or nutria trapped or shot outside open trapping season cannot be pelted or sold. A trapping license is required to sell or pelt nuisance beavers or nutria taken during open trapping season. Squirrels found destroying commercial crops of pecans may be taken year-round by permit issued by the LDWF. This permit shall be valid for 30 days from the date of issuance. Contact the local region office for details.

7. Threatened and endangered species: Louisiana black bear, Louisiana pearl shell (mussel), sea turtles, gopher tortoise, ringed sawback turtle, brown pelican, bald eagle, peregrine falcon, whooping crane, Eskimo curlew, piping plover, interior least tern, ivory-billed woodpecker, red-cockaded woodpecker, Bachman's warbler, West Indian manatee, Florida panther, pallid sturgeon, Gulf sturgeon, Atwater's greater prairie chicken, whales and red wolf. Taking or harassment of any of these species is a violation of state and federal laws.

8. Outlaw Quadrupeds. Holders of a legal hunting license may take coyotes, feral hogs, and armadillos year round during legal daylight shooting hours. The running of coyotes with dogs is prohibited in all turkey hunting areas during the open turkey season. Coyote hunting is restricted to chase only when using dogs during still hunting segments of the firearm and archery only seasons for deer. Foxes are protected quadrupeds and may be taken only with traps by licensed trappers during the trapping season. Remainder of the year "chase only" allowed by licensed hunters.

9. Nighttime Take of Nuisance Animals and Outlaw Quadrupeds. On private property, the landowner, or his lessee or agent with written permission and the landowner's contact information in his possession, may take outlaw quadrupeds (coyotes, armadillos and feral hogs), nutria, or beaver during the nighttime hours from one-half hour after official sunset on the last day of February to one-half hour after official sunset the last day of August of that same year. Such taking may be with or without the aid of artificial light, infrared or laser sighting devices, or night vision devices. In addition, pursuant to R.S. 56:116(D)(3) any person who is authorized to possess a firearm suppressor may use a firearm fitted with a sound suppressor when taking outlaw quadrupeds, nutria, or beaver. Any person attempting to take outlaw quadrupeds under the provisions of the paragraph, within 24 hours prior to the attempted taking, shall notify the sheriff of the parish in which the property is located and the LDWF Enforcement Division by calling (800) 442-2511 of their intention to attempt to take outlaw quadrupeds under the provision of this Paragraph.

10. Hunting and/or Discharging Firearms on Public Roads. Hunting, standing, loitering or shooting game quadrupeds or game birds while on a public road or public road right-of-way is prohibited. Hunting or the discharge of firearms on roads or highways located on public levees or within 100 feet from the centerline of such levee roads or highways is prohibited. Spot lighting or shining from public roads is prohibited by state law. Hunting from all public roads and public road rights-of-way is prohibited.

11. Tags. Any part of the deer or wild turkey divided shall have affixed thereto the name, date, address and big game license number of the person killing the deer or wild turkey and the sex of that animal. This information shall be legibly written in pen or pencil, on any piece of paper or cardboard or any material, which is attached or secured to or enclosing the part or parts. On lands enrolled in DMAP, deer management assistance tags must be attached and locked through the hock of antlerless deer, (including those taken with approved archery and primitive firearms, and those antlerless deer taken on either-sex days) in a manner that it cannot be removed, before the deer is moved from the site of the kill.

12. Sex Identification. Positive evidence of sex identification, including the head or sex organs, shall remain on any deer taken or killed within the state of Louisiana, or on all turkeys taken or killed so long as such deer or turkey is kept in camp or field, or is in route to the domicile of its possessor, or until such deer or turkey has been stored at the domicile of its possessor or divided at a cold storage facility and has become identifiable as food rather than as wild game.

E. General Deer Hunting Regulations

1. Prior to hunting deer, all deer hunters, regardless of age or license status, must obtain deer tags and have in possession when hunting deer. Immediately upon harvesting a deer, the hunter must tag the deer with the appropriate carcass tag and document the kill on the deer tag license. Within seven days the hunter must validate the kill. Hunters harvesting deer on DMAP lands can validate deer per instructions by LDWF using the DMAP harvest data sheets. Hunters on WMAS can validate deer during mandatory deer check hunts, when deer check stations are in operation. Hunters may validate deer by calling the validation toll free number or using the validation website.

2. 2015-2016 Season. One antlered and one antlerless deer per day (when legal) except on Kisatchie National Forest , Indian Bayou Area owned by the US Army Corps of Engineers, and some federal refuges (check refuge regulations) where the daily limit shall be one deer per day. Season limit is six, not to exceed three antlered deer or four antlerless deer (all segments included) by all methods of take, except antlerless harvest on property enrolled in DMAP does not count in the season or daily bag limit for hunters. Antlerless deer may be harvested during entire deer season on private lands (all seasons included) except as specified in deer hunting schedule. Consult deer hunting schedule in the regulations pamphlet for either-sex days for these parishes and areas. This does not apply to public lands (WMAs, national forest lands, and federal refuges) which will have specified either-sex days.

3. 2016-2017 Season. One antlered and one antlerless deer per day (when legal) except on Kisatchie National Forest, Indian Bayou area owned by the US Army Corps of Engineers, and some federal refuges (check refuge regulations) where the daily limit shall be one deer per day. Season limit is six, not to exceed three antlered deer or four antlerless deer (all segments included) by all methods of take, except antlerless harvest on property enrolled in DMAP does not count in the season or daily bag limit for

hunters. Antlerless deer may be harvested during entire deer season on private lands (all seasons included) except as specified in deer hunting schedule. Consult deer hunting schedule in the regulations pamphlet for either-sex days for these parishes and areas. This does not apply to public lands (WMAs, national forest lands, and federal refuges) which will have specified either-sex days.

4. A legal antlered deer is a deer with at least one visible antler of hardened bony material, broken naturally through the skin, except on Alexander State Forest WMA, Bayou Macon WMA, Big Lake WMA, Bodcau WMA, Boeuf WMA, Buckhorn WMA, Dewey Wills WMA, Jackson-Bienville WMA, Loggy Bayou WMA, Ouachita WMA, Pearl River WMA, Pomme de Terre WMA, Red River WMA, Russell Sage WMA, Sicily Island Hills WMA, Spring Bayou WMA, Three Rivers WMA and Union WMA during the experimental quality deer season (See the specific WMA schedule for more information.). A legal antlered deer during the experimental quality deer season shall be defined as a deer with at least four points on one side. To be counted as a point, a projection must be at least on inch long and its length must exceed the length of its base. The beam tip is counted as a point but not measured as a point. Killing antlerless deer is prohibited except where specifically allowed.

5. *Either-sex deer* is defined as male or female deer. Taking or possessing spotted fawns is prohibited.

6. It is illegal to hunt or shoot deer with firearms smaller than .22 caliber centerfire or a shotgun loaded with anything other than buckshot or rifled slug. Handguns may be used for hunting.

7. Taking game quadrupeds or birds from aircraft, participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

8. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs or moving vehicles, including ATVs, when or where a still hunting season or area is designated, is prohibited and will be strictly enforced. The training of deer dogs is prohibited in all still hunting areas during the gun still hunting and archery only season. Deer hunting with dogs is allowed in all other areas having open deer seasons that are not specifically designated as still hunting only. A leashed dog may be used to trail and retrieve wounded or unrecovered deer during legal hunting hours. Any dog used to trail or retrieve wounded or unrecovered deer shall have on a collar with owner's name, address, and phone number. In addition, a dog may be used to trail and retrieve unrecovered deer after legal hunting hours; however, no person accompanying a dog after legal hunting hours may carry a firearm of any sort.

9. It is illegal to take deer while deer are swimming or while the hunter is in a boat with motor attached in operating position; however the restriction in this paragraph shall not apply to any person who has lost one or more limbs.

10. Areas not specifically designated as open are closed.

11. Primitive Firearms Season: Still Hunt Only. Specific WMAs will also be open, check WMA schedule for specific details. Primitive firearms license is required for resident hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Either-sex deer may be taken in all deer hunting areas except as otherwise specified. It is unlawful to carry a gun, other than a primitive firearm, including those powered by air or other means, while hunting during the special primitive firearms segment. Except, it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot only).

a. Legal Firearms for Primitive Firearms Season

i. Rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle, use black powder or approved substitute only, take ball, shot, or bullet projectile only, including saboted bullets, and may be fitted with magnified scopes.

ii. Single shot, breech loading rifles or pistols, .35 caliber or larger, having an exposed hammer, that use metallic cartridges loaded either with black powder or modern smokeless powder, and may be fitted with magnified scopes.

iii. Single shot, breech loading shotguns, 10 gauge or smaller, having an exposed hammer, loaded with buckshot or rifled slug.

iv. Youths 17 or younger may hunt deer with any legal weapon during the primitive firearms season in each deer hunting area.

12. Archery Season. Archery license required for resident bow hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Either-sex deer may be taken in all areas open for deer hunting except when a bucks only season is in progress for gun hunting, and except in areas 6 and 9 from October 1-15. Archers must conform to the bucks only regulations. Either-sex deer may be taken on WMAs at any time during archery season except when bucks only seasons are in progress on the respective WMA. Also, archery season restricted on Atchafalaya Delta, Salvador, Lake Boeuf, and Pointe-aux-Chenes WMAs (see schedule).

a. Bow and Arrow Regulations. Traditional bow, compound bow and crossbow or any bow drawn, held or released by mechanical means will be a legal means of take for all properly licensed hunters. Hunting arrows for deer must have well-sharpened broadhead points. Bow and arrow fishermen must have a sport fishing license and may not carry any arrows with broadhead points unless a big game season is in progress.

i. It is unlawful:

(a). to carry a gun, including those powered by air or other means, while hunting with bow and arrow during the special bow and arrow deer season except it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot) only;

(b). to have in possession or use any poisoned or drugged arrow or arrows with explosive tips;

(c). to hunt deer with a bow having a pull less than 30 pounds;

(d). to hunt with a bow or crossbow fitted with an infrared, laser sight, electrically-operated sight or device specifically designed to enhance vision at night (does not include non-projecting red dot sights) [R.S. 56:116.1.B.(4)].

13. Hunter Orange. Any person hunting any wildlife during the open gun deer hunting season and possessing buckshot, slugs, a primitive firearm, or a centerfire rifle shall

display on his head, chest and/or back a total of not less than 400 square inches of "hunter orange". Persons hunting on privately owned land may wear a hunter orange cap or hat in lieu of the 400 square inches. These provisions shall not apply to persons hunting deer from elevated stands on property that is privately owned or to archery deer hunters hunting on lands where firearm hunting is not allowed by agreement of the landowner or lessee. However, anyone hunting deer on such lands where hunting with firearms is allowed shall be required to display the 400 square inches or a hunter orange cap or hat while walking to and from elevated stands. While a person is hunting from an elevated stand, the 400 square inches or cap or hat may be concealed. Warning: deer hunters are cautioned to watch for persons hunting other game or engaged in activities not requiring "hunter orange".

14. Physically Challenged Season on Private Lands (Either-Sex): first Saturday of October for two days. Restricted to individuals with physically challenged hunter permit.

15. Youth and Honorably Discharged Veterans Season on Private Lands (Either-Sex). Areas 1, 4, 5, 6 and 9: last Saturday of October for seven days; area 2: second Saturday of October for seven days; and areas 3, 7, 8 and 10: fourth Saturday of September for seven days. Youths 17 or younger only. Youths must be accompanied by an adult 18 years of age or older. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. Except properly licensed youths 16-17 years old and youths 12 years old or older who have successfully completed a hunter safety course may hunt without a supervising adult. One of the following must be carried by veterans while hunting:

a. Louisiana OMV issued U.S. Veterans Driver's License; or

b. U.S. Department of Defense Form 214 or one of the following DD_214 equivalents:

i. pre DD 214 era documents (1941_1950):

(a). WE AGO (war department adjutant general) forms, to include WD AGO 53, WD AGO 55, WD AGO 53_55;

(b). JAVPERS (naval personnel) discharge documents, to include NAVPERS 553, NAVMC78PD, NAVCG 553;

ii. National Personnel Records Center NPRC "statement of service," issued as a result of a destroyed discharge record during the 1973 National Archives fire;

iii. National Guard/Air National Guard must have NGB_22 with 6 or more years of service.

F. Description of Areas, 2015-2017

1. Area 1

a. All of the following parishes are open: Concordia, East Carroll, Franklin, Madison, Richland, Tensas.

b. Portions of the following parishes are also open:

i. Catahoula—east of Boeuf River to Ouachita River, east of Ouachita River from its confluence with Boeuf River to LA 8, south and east of LA 8 southwesterly to parish line;

ii. Grant—east of US 165 and south of LA 8;

iii. LaSalle—south of a line beginning where Little River enters Catahoula Lake following the center of the lake eastward to Old River then to US 84, east of US 84 northward to LA 8, south of LA 8 eastward to parish line;

iv. Ouachita—south of US 80 and east of Ouachita River, east of LA 139 from Sicard to junction of LA 134, south of LA 134 to Morehouse line at Wham Bake;

v. Rapides—east of US 165 and north of Red River.

c. Still hunting only in all or portions of the following parishes:

i. Catahoula—south of Deer Creek to Boeuf River, east of Boeuf and Ouachita Rivers to LA 8 at Harrisonburg, west of LA 8 to LA 913, west of LA 913 and LA 15 to Deer Creek;

ii. East Carroll—all;

iii. Franklin—all;

iv. Morehouse—east of US 165 (from Arkansas state line) to Bonita, south and east of LA 140 to junction of LA 830-4 (Cooper Lake Road), east of LA 830-4 to Bastrop, east of LA 139 at Bastrop to junction of LA 593, east and north of LA 593 to Collinston, east of LA 138 to junction of LA 134 and south of LA 134 to Ouachita line at Wham Brake;

v. Ouachita—south of US 80 and east of Ouachita River, east of LA 139 from Sicard to junction of LA 134, south of LA 134 to Morehouse line at Wham Bake;

vi. Richland—all.

2. Area 2

a. All of the following parishes are open:

i. Bienville, Bossier, Caddo, Caldwell, Claiborne, DeSoto, Jackson, Lincoln, Natchitoches, Red River, Sabine, Union, Webster, Winn;

ii. except: Kisatchie National Forest which has special regulations. Caney, Corney, Middlefork tracts of Kisatchie have the same regulations as area 2, except still hunting only for deer.

b. Portions of the following parishes are also open:

i. Allen—north of US 190 from parish line westward to Kinder, east of US 165 from Kinder northward to LA 10 at Oakdale, north of LA 10 from Oakdale westward to the parish line;

ii. Avoyelles—that portion west of I-49;

iii. Catahoula—west of Boeuf River to Ouachita River, west of Ouachita River from its confluence with Boeuf River to LA 8, north and west of LA 8 southwesterly to parish line;

iv. Evangeline—all except the following portions: east of I-49 to junction of LA 29, east of LA 29 south of I-49 to Ville Platte, and north of US 167 east of Ville Platte;

v. Grant—all except that portion south of LA 8 and east of US 165;

vi. Jefferson Davis—north of US 190;

vii. LaSalle—north of a line beginning where Little River enters Catahoula Lake, following the center of the lake eastward to Old River then to US 84, west of US 84 northward to LA 8, north of LA 8 eastward to parish line;

viii. Morehouse—west of US 165 (from Arkansas state line) to Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to Bastrop, west of LA 139 to junction of LA 593, west and south of LA 593 to Collinston, west of LA 138 to junction of LA 134 and north of LA 134 to Ouachita Parish line at Wham Brake;

ix. Ouachita—all except south of US 80 and east of Ouachita River, east of LA 139 from Sicard to junction of LA 134, south of LA 134 to Morehouse Parish line at Wham Brake;

x. Rapides—all except north of Red River and east of US 165, south of LA 465 to junction of LA 121, west of LA 121 and LA 112 to Union Hill, and north of LA 113 from Union Hill to Vernon Parish line, and that portion south of Alexandria between Red River and US 167 to junction of US 167 with I-49 at Turkey Creek exit, east of I-49 southward to parish line;

xi. Vernon—north of LA 10 from the parish line westward to LA 113, south of LA 113 eastward to parish line. Also the portion north of LA 465 west of LA 117 from Kurthwood to Leesville and north of LA 8 from Leesville to Texas state line.

c. Still hunting only in all or portions of the following parishes:

i. Claiborne and Webster—Caney, Corney and Middlefork tracts of Kisatchie National Forest (see Kisatchie National Forest regulations);

ii. Ouachita—east of Ouachita River;

iii. Rapides—west of US 167 from Alexandria southward to I-49 at Turkey Creek exit, west of I-49 southward to parish line, north of parish line westward to US 165, east of US 165 northward to US 167 at Alexandria. North of LA 465 from Vernon Parish line to LA 121, west of LA 121 to I-49, west of I-49 to LA 8, south and east of LA 8 to LA 118 (Mora Road), south and west of LA 118 to Natchitoches Parish line;

iv. Vernon—east of Mora-Hutton Road from Natchitoches Parish line to Hillman Loop Road, south and east of Hillman Loop Road to Comrade Road, south of Comrade Road to LA 465, east and north of LA 465 to Rapides Parish line.

3. Area 3

a. Portions of the following parishes are open:

i. Acadia—north of I-10;

ii. Allen—south of US 190 and west of LA 113;

iii. Beauregard—west of LA 113 and east of LA 27 from the parish line northward to DeRidder and north of US 190 westward from DeRidder to Texas state line;

iv. Calcasieu—east of LA 27 from Sulphur northward to the parish line, and north of I-10;

v. Jefferson Davis—north of I-10 and south of US 190;

vi. Lafayette—west of I-49 and north of I-10;

vii. Rapides—south of LA 465 to junction of LA 121, west of LA 121 and LA 112 to Union Hill and north of LA 113 from Union Hill to Vernon Parish line;

viii. St. Landry—west of US 167;

ix. Vernon—west and north of LA 113, south of LA 465, east of LA 117 from Kurthwood to Leesville, and south of LA 8 from Leesville to Texas state line.

4. Area 4

a. All of St. Helena and Washington Parishes are open.

b. Portions of the following parishes are also open:

i. East Baton Rouge—all except that portion north of I-110 and west of US 61;

ii. East Feliciana—east of US 61;

iii. West Feliciana—east of US 61;

iv. Livingston—north of I-12;

v. Tangipahoa—north of I-12;

vi. St. Tammany—all except that portion south of I-12, west of LA 1077 to LA 22, south of LA 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain.

c. Still hunting only in all or portions of the following parishes:

i. East Feliciana and East Baton Rouge—east of Thompson Creek from the Mississippi state line to LA 10, north of LA 10 from Thompson Creek to LA 67 at Clinton, west of LA 67 from Clinton to Mississippi state line, south of Mississippi state line from LA 67 to Thompson Creek. Also that portion of East Baton Rouge Parish east of LA 67 from LA 64 north to Parish Line, south of Parish Line from LA 64 eastward to Amite River, west of Amite River southward to LA 64, north of LA 64 to LA 37 at Magnolia, east of LA 37 northward to LA 64 at Indian Mound, north of LA 64 from Indian Mound to LA 67. Also, that portion of East Feliciana Parish east of LA 67 from parish line north to LA 959, south of LA 959 east to LA 63, west of LA 63 to Amite River, west of Amite River southward to parish line, north of parish line westward to LA 67;

ii. St. Helena—north of LA 16 from Tickfaw River at Montpelier westward to LA 449, east and south of LA 449 from LA 16 at Pine Grove northward to Rohner Road, south of Rohner Road to LA 1045, south of LA 1045 to the Tickfaw River, west of the Tickfaw River from LA 1045 southward to LA 16 at Montpelier;

iii. Tangipahoa—that portion of Tangipahoa Parish north of LA 10 from the Tchefuncte River to LA 1061 at Wilmer, east of LA 1061 to LA 440 at Bolivar, south of LA 440 to the Tchefuncte River, west of the Tchefuncte River from LA 440 southward to LA 10;

iv. Washington and St. Tammany—east of LA 21 from the Mississippi state line southward to the Bogue Chitto River, north of the Bogue Chitto River from LA 21 eastward to the Pearl River Navigation Canal, east of the Pearl River Navigation Canal southward to the West Pearl River, north of the West Pearl River from the Pearl River Navigation Canal to Holmes Bayou, west of Holmes Bayou from the West Pearl River northward to the Pearl River, west of the Pearl River from Holmes Bayou northward to the Mississippi state line, south of the Mississippi state line from the Pearl River westward to LA 21. Also, that portion of Washington Parish west of LA 25 from the Mississippi state line southward to the Bogue Chitto River, then west of the Bogue Chitto River to its junction with the St. Tammany Parish line, north of the St. Tammany Parish line to the

Tangipahoa Parish line, east of the Tangipahoa Parish line to the Mississippi state line, south of the Mississippi state line to its junction with LA 25;

v. West Feliciana—west of Thompson Creek to Illinois-Central Railroad, north of Illinois-Central Railroad to Parish Road #7, east of Parish Road #7 to the junction of US 61 and LA 966, east of LA 966 from US 61 to Chaney Creek, south of Chaney Creek to Thompson Creek.

5. Area 5

a. All of West Carroll Parish is open.

6. Area 6

a. All of Point Coupee Parish is open.

b. Portions of the following parishes are also open:

i. Avoyelles—all except that portion west of I-49;

ii. Evangeline—that portion east of I-49 to junction of LA 29, east of LA 29 south of I-49 to Ville Platte and north of US 167 east of Ville Platte;

iii. Iberville—all north of I-10, and that portion south of I-10 at the Atchafalaya Basin protection levee south to Upper Grand River, then north of Upper Grand River to the Intracoastal Canal at Jack Miller, then west of the Intracoastal Canal northward to Bayou Plaquemine, then north of Bayou Plaquemine to the Mississippi River;

iv. Lafayette—north of I-10 and east of I-49;

v. Rapides—south of Alexandria between Red River and US 167 to the junction of US 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line;

vi. St. Landry—east of US 167;

vii. St. Martin—north of I-10;

viii. East Baton Rouge—north of I-110 and west of US 61;

ix. West Feliciana—west of US 61;

x. East Feliciana—west of US 61;

xi. West Baton Rouge—north I-10.

c. Still hunting only in all or portions of the following parishes:

i. Avoyelles—north of LA 1 from Simmesport westward to LA 115 at Marksville, east of LA 115 from Marksville northward to the Red River near Moncla, south and west of the Red River to LA 1 at Simmesport;

ii. Rapides—south of Alexandria between Red River and US 167 to the junction of US 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line;

iii. West Feliciana—west of Thompson Creek to Illinois-Central Railroad, north of Illinois-Central Railroad to Parish Road #7, east of Parish Road #7 to the junction of US 61 and LA 966, east of LA 966 from US 61 to Chaney Creek, south of Chaney Creek to Thompson Creek.

7. Area 7

a. Portions of the following parishes are open:

i. Iberia—south of LA 14 and west of US 90;

ii. St. Mary—all except that portion north of US 90 from Iberia Parish line eastward to Wax Lake Outlet, east of Wax Lake Outlet southward to Intracoastal Waterway, north of Intracoastal Waterway eastward to the Atchafalaya River, east of the Atchafalaya River.

8. Area 8

a. Portions of the following parishes are open:

i. Allen—that portion east of LA 113 from the parish line to US 190, north of US 190 eastward to Kinder, west of US 165 northward to LA 10 at Oakdale and south of LA 10 from Oakdale westward to parish line;

ii. Beauregard—that portion east of LA 113. Also that portion west of LA 27 from parish line northward to DeRidder, south of US 190 from DeRidder to Texas state line;

iii. Calcasieu—that portion west of LA 27 from the parish line southward to Sulphur and north of I-10 from Sulphur to the Texas state line;

iv. Vernon—that portion west of LA 113 from the parish line northward to Pitkin and south of LA 10 from Pitkin southward to the parish line.

9. Area 9

a. All of the following parishes are open: Ascension, Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John, Terrebonne.

b. Portions of the following parishes are open:

i. Iberia—east of US 90;

ii. Iberville—south of I-10, and west of the Atchafalaya Basin Protection levee, to Upper Grand River, then South of Upper Grand River to the Intracoastal Canal at Jack Miller, then east of the Intracoastal Canal to Bayou Plaquemines, then south of Bayou Plaquemines to the Mississippi River;

iii. Lafayette—south of I-10 and east of US 90;

iv. Livingston—south of I-12;

v. St. Martin—south of I-10;

vi. St. Mary—north of US 90 from Iberia Parish line eastward to Wax Lake Outlet, east of Wax Lake Outlet southward to Intracoastal Waterway, north of Intracoastal Waterway eastward to the Atchafalaya River, east of the Atchafalaya River;

vii. St. Tammany—that portion south of I-12, west of LA 1077 to LA 22, south of LA 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain;

viii. Tangipahoa—south of I-12;

ix. high water benchmark closure. Deer hunting in those portions of Iberia, Iberville, St. Martin, and St. Mary parishes south of I-10, west of the East Guide Levee, east of the West Guide Levee, and north of US 90 will be closed when the river stage of the Atchafalaya River reaches 18 feet at Butte LaRose.

c. Still hunting only in all or portions of the following parishes:

i. Iberville—east of the Mississippi River;

ii. Plaquemines—east of the Mississippi River;

iii. St. Bernard—all of the parish shall be still hunting only except that portion of St. Bernard known as the spoil area between the MRGO on the east and Access Canal on the west, south of Bayou Bienvenue and north of Bayou la Loutre;

iv. St. John—south of Pass Manchac from Lake Pontchartrain to US 51, east of US 51 from Pass Manchac to LA 638 (Frenier Beach Road). North of LA 638 from US 51 to Lake Pontchartrain, west of Lake Pontchartrain from LA 638 to Pass Manchac.

10. Area 10

a. All of Cameron and Vermillion Parishes are open.

b. Portions of the following parishes are open:

i. Acadia—south of I-10;
ii. Calcasieu—south of I-10;
iii. Iberia—west of US 90 and north of LA 14;
iv. Jefferson Davis—south of I-10;
v. Lafayette—south of I-10 and west of Hwy 90.

G. WMA Regulations

1. General

a. The following rules and regulations concerning the management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in *Louisiana Revised Statutes* of 1950, section 109 of title 56. Failure to comply with these regulations will subject individual to citation and/or expulsion from the management area.

b. Citizens are cautioned that by entering a WMA managed by the LDWF they may be subjecting themselves and/or their vehicles to game and/or license checks, inspections and searches.

c. WMA seasons may be altered or closed anytime by the LDWF secretary in emergency situations (floods, fire or other critical circumstances).

d. Hunters may enter the WMA no earlier than 4 a.m. unless otherwise specified. Hunters must check out and exit the WMA no later than two hours after sunset, or as otherwise specified.

e. Lands within WMA boundaries will have the same seasons and regulations pertaining to baiting and use of dogs as the WMA within which the lands are enclosed; however, with respect to private lands enclosed within a WMA, the owner or lessee may elect to hunt according to the regular season dates and hunting regulations applicable to the geographic area in which the lands are located, provided that the lands are first enrolled in DMAP. Interested parties should contact the nearest LDWF region office for additional information.

f. Dumping garbage or trash on WMAs is prohibited. Garbage and trash may be properly disposed of in designated locations if provided.

g. Disorderly conduct or hunting under influence of alcoholic beverages, chemicals and other similar substances is prohibited.

h. Damage to or removal of trees, shrubs, hard mast (including but not limited to acorns and pecans), wild plants, non-game wildlife (including reptiles and amphibians) or any species of butterflies, skippers or moths is prohibited without a permit from the LDWF. Gathering and/or removal of soft fruits, mushrooms and berries shall be limited to five gallons per person per day.

i. Burning of marshes is prohibited. Hunting actively burning marsh is prohibited.

j. Nature Trails. Trails shall be limited to pedestrians only. No vehicles, ATVs, horses, mules, bicycles, etc. allowed. Removal of vegetation (standing or down) or other natural material prohibited.

k. Deer seasons are for legal buck deer unless otherwise specified.

l. Small game, when listed under the WMA regulations may include both resident game animals and game birds as well as migratory species of birds.

m. Oysters may not be harvested from any WMA, except that oysters may be harvested from private oyster leases and state seed grounds located within a WMA, when authorized by the Wildlife and Fisheries Commission and upon approval by the Department of Health and Hospitals.

n. Free ranging livestock prohibited.

2. Permits

a. A WMA hunting permit is required for persons ages 18 through 59 to hunt on WMAs.

b. Self-Clearing Permits. A self-clearing permit is required for all activities (hunting, fishing, hiking, bird watching, sightseeing, etc.) on WMAs unless otherwise specified. The self-clearing permit will consist of two portions: check in, check out. On WMAs where self-clearing permits are required, all persons must obtain a WMA self-clearing permit from an information station. The check in portion must be completed and put in a permit box before each day's activity on the day of the activity (except if hunting from a private camp adjacent to the WMA being hunted or if camping on the WMA, users need only to check in once during any 72 hour period). Users may check-in one day in advance of use. The check-out portion must be carried by each person while on the WMA and must be completed and put in a permit box immediately upon exiting the WMA or within 72 hours after checking in if hunting from a private camp adjacent to the WMA being hunted or if camping on the WMA. No permit is required of fishers and boaters who do not travel on a WMA road and/or launch on the WMA as long as they do not get out of the boat and onto the WMA. When mandatory deer checks are specified on WMAs, hunters must check deer at a check station. (Self-clearing permits are not required for persons only traveling through the WMA provided that the most direct route is taken and no activities or stops take place.)

c. Persons using WMAs or other LDWF administered lands for any purpose must possess one of the following: a valid wild Louisiana stamp, a valid Louisiana fishing license, or a valid Louisiana hunting license. Persons younger than 16 or older than 60 years of age are exempt from this requirement. Also a self-clearing WMA permit, detailed above, may be required (available at most entrances to each WMA). Check individual WMA listings for exceptions.

3. Special Seasons

a. Youth Deer Hunt. Youths 17 or younger only. Youths must be accompanied by an adult 18 years of age or older. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer hunting. The supervising adult shall maintain visual and voice contact with the youth at all times, except properly licensed youths and youths 12 years old or older who have successfully completed a hunter safety course may hunt without a supervising adult. Contact the appropriate region office for maps of specific hunting areas. Either-sex deer may be taken

on WMAs with youth hunts. Consult the regulations pamphlet for WMAs offering youth hunts.

NOTE: Some hunts may be by pre-application lottery.

b. Youth Squirrel Hunt (on selected WMAs only). Only youths 17 or younger may hunt. Squirrel, rabbit, raccoon, hogs and opossum may be taken. No dogs allowed. All other seasons will remain open to other hunters. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. Youths must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times, except properly licensed youths and youths 12 years old or older who have successfully completed a hunter safety course may hunt without a supervising adult. Self-clearing permits are required. Consult the regulations pamphlet for WMAs offering youth squirrel hunts.

c. Youth Mourning Dove Hunt. A youth mourning dove hunt will be conducted on specific WMAs and will follow the same regulations provided for youth deer hunts on the first or second weekend of the mourning dove season (Saturday and/or Sunday only). Consult the regulations pamphlet for WMAs offering youth mourning dove hunts.

d. Physically Challenged Season. An either-sex deer season will be held for hunters possessing a physically challenged hunter permit on WMAs during the dates specified under the individual WMA. Participants must possess a physically challenged hunter permit. Contact region office for permit application and map of specific hunting area. Consult the regulations pamphlet for WMAs offering physically challenged seasons.

e. Turkey Lottery Hunts. Hunts restricted to those persons selected by lottery. Consult the regulations pamphlet for deadlines. All turkeys must be reported at self-clearing station. Contact region offices for more details. Consult separate turkey hunting regulations pamphlet for more details.

f. Waterfowl Lottery Hunts. Hunts restricted to those persons selected by lottery. Consult the regulations pamphlet for deadline. Consult regulations pamphlet for individual WMA schedules or contact any Wildlife Division Office for more details.

g. Mourning Dove Lottery Hunts. Consult regulations pamphlet for individual WMA schedules or contact any Wildlife Division office for more details.

h. Trapping. Consult annual trapping regulations for specific dates. All traps must be run daily. Traps with teeth are illegal. Hunter orange required when a deer gun season is in progress.

i. Raccoon Hunting. A licensed hunter may take raccoon or opossum, one per person per day, during daylight hours only, during the open rabbit season on WMAs.

Nighttime Experimental—all nighttime raccoon hunting where allowed is with dogs only. There is no bag limit. Self-clearing permit required.

j. Sport Fishing. Sport fishing, crawfishing and frogging are allowed on WMAs when in compliance with current laws and regulations except as otherwise specified under individual WMA listings.

k. Small Game Emphasis Areas. Specially designated areas on certain WMAs will allow small game hunting with dogs, confined to that specific area when the remainder of the WMA is restricted to still hunt only. Additionally, off season training of rabbit and bird dogs may be allowed on some of the small game emphasis areas. Small game emphasis areas are offered on Big Colewa Bayou, Bayou Macon, Bayou Pierre, Boeuf, Dewey W. Wills, Marsh Bayou, Ouachita, Richard K. Yancey, Sandy Hollow, Sherburne, and Walnut Hill WMAs.

4. Firearms

a. Firearms having live ammunition in the chamber, magazine, cylinder or clip when attached to firearms and crossbows cocked in the ready position are not allowed in or on vehicles, boats under power, motorcycles, ATVs, UTVs, ATCs or in camping areas on WMAs. Firearms may not be carried on any area before or after permitted hours except in authorized camping areas and except as may be permitted for authorized trappers.

b. Firearms and bows and arrows are not allowed on WMAs during closed seasons except on designated shooting ranges or as permitted for trapping and except as allowed pursuant to R.S. 56:109(C) and R.S. 56:1691. Bows and broadhead arrows are not allowed on WMAs except during deer archery season, turkey season or as permitted for bowfishing. Active and retired law enforcement officers in compliance with POST requirements, federal law enforcement officers and holders of Louisiana concealed handgun permits or permit holders from a reciprocal state who are in compliance with all other state and federal firearms regulations may possess firearms on WMAs provided these firearms are not used for any hunting purpose.

c. Encased or broken down firearms and any game harvested may be transported through the areas by the most direct route provided that no other route exists except as specified under WMA listing.

d. Loaded firearms are not allowed near WMA check stations.

e. Centerfire rifles and handguns larger than .22 caliber rimfire, shotgun slugs or shot larger than BB lead or F steel shot cannot be carried onto any WMA except during modern and primitive firearm deer seasons and during special shotgun season for feral hogs on Atchafalaya Delta, Pass-a-Loutre, Pointe-aux-Chenes and Salvador WMAs (consult regulations pamphlet for specific WMA regulations).

f. Target shooting and other forms of practice shooting are prohibited on WMAs except as otherwise specified.

g. Discharging of firearms on or across, or hunting from designated roads, ATV/UTV trails, nature trails, hiking trails, and their rights-of-way is prohibited during the modern firearms and primitive firearms deer seasons.

5. Methods of Taking Game

a. Moving deer or hogs on a WMA with organized drives and standers, drivers or making use of noises or noise-making devices is prohibited.

b. On WMAs the daily limit shall be one antlered deer and one antlerless deer (when legal) per day, not to

exceed three antlered deer or four antlerless deer per season (all segments included) by all methods of take.

c. Baiting, hunting over bait, or possession of bait is prohibited on all WMAs, EXCEPT bait may be kept in a vehicle traversing a WMA road or parked on a WMA road. Bait is defined as any substance used to attract game via ingestion.

d. During mandatory deer check hunts, deer may not be skinned nor have any external body parts removed including but not limited to feet, legs, tail, head or ears before being checked out.

e. Deer hunting on WMAs is restricted to still hunting only.

f. Construction of and/or hunting from permanent tree stands or permanent blinds on WMAs is prohibited. Any permanent stand or permanent blind will be removed and destroyed. A permanent blind is any blind using non-natural materials or having a frame which is not dismantled within two hours after the end of legal shooting time each day. Blinds with frames of wood, plastic, metal poles, wire, mesh, webbing or other materials may be used but must be removed from the WMA within two hours after the end of legal shooting time each day. Blinds made solely of natural vegetation and not held together by nails or other metallic fasteners may be left in place but cannot be used to reserve hunting locations. Natural vegetation (including any material used as corner posts) is defined as natural branches that are 2 inches or less in diameter. All decoys must be removed from the WMA daily. Permanent tree stands are any stands that use nails, screws, spikes, etc., to attach to trees and are strictly prohibited. Deer stands may not be left on WMAs unless the stands are removed from trees, placed flat on the ground, and left in a non-hunting position (a non-hunting position is one in which a hunter could not hunt from the stand in its present position). Also, all stands left must be legibly tagged with the user's name, address, phone number and LDWF i.d. number. No stand may be left on any WMA prior to the day before deer season opens on that WMA and all stands must be removed from the WMA within one day after the close of deer hunting on that WMA. Free standing blinds must be disassembled when not in use. Stands left will not reserve hunting sites for the owner or user. All portable stands, blinds, tripods, etc., found unattended in a hunting position, not placed flat on the ground, or untagged will be confiscated and disposed of by the LDWF. LDWF is not responsible for unattended stands left on an area.

g. Physically Challenged Wheelchair Confined Deer and Waterfowl Hunting Areas: special deer and waterfowl hunting areas, blinds and stands identified with LDWF logos, have been established for physically challenged hunter permit (PCHP) wheelchair confined hunters on WMAs. Hunters must obtain a PCHP permit and are required to make reservations to use blinds and stands. PCHP wheelchair hunting areas are available on Alexander State Forest, Big Colewa Bayou, Buckhorn, Clear Creek, Elbow Slough, Floy McElroy, Jackson-Bienville, Ouachita, Sandy Hollow, and Sherburne WMAs. Check WMA hunting schedules or call the LDWF field offices in Pineville, Lake Charles, Opelousas, Minden, Monroe or Hammond for information.

h. Hunting from utility poles and structures, and oil and gas exploration facilities or platforms is prohibited.

i. It is illegal to save or reserve hunting locations using permanent stands or blinds. Stands or blinds attached to trees with screws, nails, spikes, etc. are illegal.

j. Tree climbing spurs, spikes or screw-in steps are prohibited.

k. Unattended decoys will be confiscated and forfeited to the LDWF and disposed of by the LDWF. This action is necessary to prevent preemption of hunting space.

l. Spot lighting (shining) from vehicles is prohibited on all WMAs.

m. Horses and mules may be ridden on WMAs except where prohibited and except during gun seasons for deer and turkey. Riding is restricted to designated roads and trails depicted on WMA map, self-clearing permit is required. Organized trail rides prohibited except allowed by permit only on Camp Beauregard. Hunting and trapping from horses and mules is prohibited except for quail hunting or as otherwise specified. Horse-drawn conveyances are prohibited.

n. All hunters (including archers and small game hunters) except waterfowl hunters and mourning dove hunters on WMAs must display 400 square inches of "hunter orange" and wear a "hunter orange" cap during open gun season for deer. Quail and woodcock hunters and hunters participating in special dog seasons for rabbit, squirrel and feral hogs are required to wear a minimum of a "hunter orange" cap. All other hunters and archers (while on the ground) except waterfowl hunters also must wear a minimum of a "hunter orange" cap during special dog seasons for rabbit and squirrel and feral hogs. Also all persons afield during hunting seasons are encouraged to display "hunter orange". Hunters participating in special shotgun season for feral hogs on Atchafalaya Delta, Pass-a-Loutre, Pointe-aux-Chenes and Salvador WMAs must display 400 square inches of hunter orange and wear a "hunter orange" cap.

o. Deer hunters hunting from concealed ground blinds must display a minimum of 400 square inches of "hunter orange" above or around their blinds which is visible from 360 degrees.

p. Archery Season for Deer. The archery season on WMAs is the same as outside and is open for either-sex deer except as otherwise specified on individual WMAs. Archery season restricted on Atchafalaya Delta and closed on certain WMAs when special seasons for youth or physically challenged hunts are in progress. Consult regulations pamphlet for specific seasons.

q. Either-sex deer may be taken on WMAs at any time during archery season except when bucks only seasons are in progress on the respective WMAs. Archers must abide by bucks only regulations and other restrictions when such seasons are in progress.

r. Primitive Firearms Season for Deer. Either-sex unless otherwise specified. See WMA deer schedule. Except youths 17 or younger may use any legal weapon during the primitive firearm season.

6. Camping

a. Camping on WMAs, including trailers, houseboats, recreational vehicles and tents, is allowed only in designated areas and for a period not to exceed 16 consecutive days, regardless if the camp is attended or unattended. At the end of the 16-day period, camps must be

removed from the area for at least 48 hours. Camping area use limited exclusively to outdoor recreational activities.

b. Houseboats are prohibited from overnight mooring within WMAs except on stream banks adjacent to LDWF-owned designated camping areas. Overnight mooring of vessels that provide lodging for hire are prohibited on WMAs. Houseboats shall not impede navigation. On Atchafalaya Delta WMA houseboats may be moored by permit only in designated areas during hunting season. Permits are available by lottery annually or by three year lease through a bid program.

c. Discharge of human waste onto lands or waters of any WMA is strictly prohibited by state and federal law. In the event public restroom facilities are not available at a WMA, the following is required. Anyone camping on a WMA in a camper, trailer, or other unit (other than a houseboat or tent) shall have and shall utilize an operational disposal system attached to the unit. Tent campers shall have and shall utilize portable waste disposal units and shall remove all human waste from the WMA upon leaving. Houseboats moored on a WMA shall have a permit or letter of certification from the Health Unit (Department of Health and Hospitals) of the parish within which the WMA occurs verifying that it has an approved sewerage disposal system on board. Further, that system shall be utilized by occupants of the houseboats when on the WMA.

d. No refuse or garbage may be dumped from these boats.

e. Firearms may not be kept loaded or discharged in a camping area unless otherwise specified.

f. Campsites must be cleaned by occupants prior to leaving and all refuse placed in designated locations when provided or carried off by campers.

g. Trash must be contained at all times while camping.

h. Burning of trash is prohibited.

i. Glass containers prohibited on campgrounds.

j. Non-compliance with camping regulations will subject occupant to immediate expulsion and/or citation, including restitution for damages.

k. Swimming is prohibited within 100 yards of boat launching ramps.

7. Restricted Areas

a. For your safety, all oil and gas production facilities (wells, pumping stations and storage facilities) are off limits.

b. No unauthorized entry or unauthorized hunting in restricted areas, refuges, or limited use areas unless otherwise specified.

8. Dogs. All use of dogs on WMAs, except for bird hunting and duck hunting, is experimental as required by law. Having or using dogs on any WMA is prohibited except for nighttime experimental raccoon hunting, squirrel hunting, rabbit hunting, bird hunting, duck hunting, hog hunting and bird dog training when allowed; see individual WMA season listings for WMAs that allow dogs. Dogs running at large are prohibited on WMAs. The owner or handler of said dogs shall be liable. Only recognizable breeds of bird dogs and retrievers are allowed for quail and migratory bird hunting. Only beagle hounds which do not exceed 15 inches at the front shoulders and which have recognizable characteristics of the breed may be used on WMAs having experimental rabbit seasons. A leashed dog may be used to trail and retrieve wounded or unrecovered deer during legal hunting hours. Any dog used to trail or retrieve wounded or unrecovered deer shall have on a collar with owner's name, address and phone number. In addition, a dog may be used to trail and retrieve unrecovered deer after legal hunting hours; however, no person accompanying a dog after legal hunting hours may carry a firearm of any sort.

9. Vehicles

a. An all-terrain vehicle is an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight-750 pounds, length-85", and width-48". ATV tires are restricted to those no larger than 26 x 12 with a maximum l" lug height and a maximum allowable tire pressure of 12 psi. as indicated on the tire by the manufacturer. Use of all other ATVs or ATV tires are prohibited on a WMA.

b. *Utility type vehicle* (UTV, also *utility terrain vehicle*) is defined as any recreational motor vehicle other than an ATV, not legal for highway use, designed for and capable of travel over designated unpaved roads, traveling on four or more low-pressure tires, with factory specifications not to exceed the following: weight-1900 pounds, length-128" and width-68". UTV tires are restricted to those no larger than 26 x 12 with a maximum 1" lug height and a maximum allowable tire pressure of 12 psi. UTV's are commonly referred to as side by sides and may include golf carts.

c. Vehicles having wheels with a wheel-tire combination radius of 17 inches or more measured from the center of the hub and horizontal to ground are prohibited.

d. The testing, racing, speeding or unusual maneuvering of any type of vehicle is prohibited within WMAs due to property damages resulting in high maintenance costs, disturbance of wildlife and destruction of forest reproduction.

e. Tractor or implement tires with farm tread designs Rl, R2 and R4 known commonly as spade or lug grip types are prohibited on all vehicles.

f. Airboats, aircraft, personal water craft, "mud crawling vessels" (commonly referred to as crawfish combines which use paddle wheels for locomotion) and hover craft are prohibited on all WMAs and refuges. Personal water craft are defined as a vessel which uses an inboard motor powering a water jet pump as its primary source of propulsion and is designed to be operated by a person sitting, standing or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel. Personal water craft allowed on designated areas of Alexander State Forest WMA. Except, type A personal water craft, model year 2003 and beyond, which are eight feet in length and greater, may be operated in the areas of Catahoula Lake, Manchac WMA, Maurepas Swamp WMA, Pearl River WMA and Pointe-aux-Chenes WMA from April 1 until the Monday of Labor Day weekend, from sunrise to sunset only. No person shall operate such water craft at a speed greater than slow/no wake within 100 feet of an anchored or moored vessel, shoreline, dock, pier, persons engaged in angling or any other manually powered vessel.

g. Driving or parking vehicles on food or cover plots and strips is prohibited.

h. Blocking the entrance to roads and trails is prohibited.

i. Licensed motorized vehicles (LMVs) legal for highway use, including motorcycles, are restricted entirely to designated roads as indicated on WMA maps. UTVs are restricted to marked UTV trails only, EXCEPT that those UTVs in which the manufacturer's specifications do not exceed the weight, length, width, and tire restrictions for ATVs are allowed on ATV trails. ATVs are restricted to marked ATV trails only when WMA roads are closed to LMVs, ATVs and UTVs may then use those roads when allowed. This restriction does not apply to bicycles.

NOTE: Only ATV and UTV trails marked with signs and/or paint, and depicted on WMA maps are open for use.

j. Use of special ATV trails for physically challenged persons is restricted to ATV physically challenged permittees. Physically challenged ATV permittees are restricted to physically challenged ATV trails or other ATV trails only as indicated on WMA maps or as marked by sign and/or paint. Persons 60 years of age and older, with proof of age, are also allowed to use special physically challenged trails and need not obtain a permit. However, these persons must abide by all rules in place for these trails. Physically challenged persons under the age of 60 must apply for and obtain a physically challenged hunter program permit from the LDWF.

k. Entrances to ATV trails will be marked with peach colored paint. Entrances to physically challenged-only ATV trails will be marked with blue colored paint. Entrances to ATV trails that are open all year long will be marked with purple paint. The end of all ATV trails will be marked by red paint. WMA maps serve only as a general guide to the route of most ATV trails, therefore all signage and paint marking as previously described will be used to determine compliance. Deviation from this will constitute a violation of WMA rules and regulations.

l. Roads and trails may be closed due to poor condition, construction or wet weather.

m. ATVs, and motorcycles cannot be left overnight on WMAs except on designated camping areas. ATVs are prohibited from two hours after sunset to 4 a.m., except raccoon hunters may use ATVs during nighttime raccoon take seasons only. ATVs are prohibited from March 1 through August 31 except squirrel hunters are allowed to use ATV trails during the spring squirrel season on the WMA and except certain trails may be open during this time period to provide access for fishing or other purposes and some ATV trails will be open all year long on certain WMAs.

n. Caution. Many LDWF-maintained roadways on WMAs are unimproved and substandard. A maximum 20 mph speed limit is recommended for all land vehicles using these roads, unless specific signage otherwise allows or restricts.

o. Hunters are allowed to retrieve their own downed deer and hogs with the aid of an ATV except on Thistlethwaite, Sherburne, Atchafalaya Delta, Pass-a-Loutre, Pointe-aux-Chenes, Salvador, Timken, Lake Bouef, and Biloxi WMAs under the following conditions:

i. no firearms or archery equipment is in possession of the retrieval party or on the ATV;

ii. the retrieval party may consist of no more than one ATV and one helper;

iii. ATVs may not be used to locate or search for wounded game or for any other purpose than retrieval of deer and hogs once they have been legally harvested and located;

iv. UTV's may not be used to retrieve downed deer or hogs.

10. Commercial Activities

a. Hunting Guides/Outfitters. No person or group may act as a hunting guide, outfitter or in any other capacity for which they are paid or promised to be paid directly or indirectly by any other individual or individuals for services rendered to any other person or persons hunting on any WMA, regardless of whether such payment is for guiding, outfitting, lodging or club memberships.

b. Except for licensed activities otherwise allowed by law, commercial activities are prohibited without a permit issued by the secretary of the LDWF.

c. Commercial Fishing. Permits are required of all commercial fishermen using Grassy Lake, Pomme de Terre and Spring Bayou WMAs. Gill nets or trammel nets and the take or possession of grass carp are prohibited on Spring Bayou WMA. Drag seines (except minnow and bait seines) are prohibited except experimental bait seines allowed on Dewey Wills WMA north of LA 28 in Diversion Canal. Commercial fishing is prohibited during regular waterfowl seasons on Grand Bay, Silver Lake and Lower Sunk Lake on Richard K. Yancey WMA. Commercial fishing is prohibited on Salvador/Timken, Ouachita and Pointe-aux-Chenes WMAs except commercial fishing on Pointe-aux-Chenes is allowed in Cut Off Canal and Wonder Lake. No commercial fishing activity shall impede navigation and no unattended vessels or barges will be allowed. Non-compliance with permit regulations will result in revocation of commercial fishing privileges for the period the license is issued and one year thereafter. Commercial fishing is allowed on Pass-a-Loutre and Atchafalaya Delta WMAs. See Pass-a-Loutre for additional commercial fishing regulations on mullet.

11. WMAs Basic Season Structure. For season dates, bag limits, shooting hours, special seasons and other information consult the annual regulations pamphlet for specific details.

12. Resident Small Game (squirrel, rabbit, quail, mourning dove, woodcock, snipe, rail and gallinule). Same as outside except closed during modern firearm either-sex deer seasons on certain WMAs (see WMA schedule) and except non-toxic shot must be used for rail, snipe, and gallinule. Consult regulations pamphlet. Unless otherwise specified under a specific WMA hunting schedule, the use of dogs for rabbit and squirrel hunting is prohibited. Spring squirrel season with or without dogs: first Saturday of May for nine days. Consult regulations pamphlet for specific WMAs.

13. Waterfowl (ducks, geese and coots). Consult regulations pamphlet. Hunting after 2 p.m. prohibited on all WMAs except for Atchafalaya Delta, Attakapas, Biloxi, Lake Boeuf, Pass-a-Loutre, Pointe-aux-Chenes, and Salvador/Timken WMAs. Consult specific WMA regulations for shooting hours on these WMAs.

14. Archery. Consult regulations pamphlet.

15. Hogs. Feral hogs may be taken during any open hunting season on WMAs by properly licensed and/or

permitted hunters using only guns or bow and arrow legal for specified seasons in progress, except take of hogs is prohibited during nighttime raccoon seasons. Hogs may not be taken with the aid of dogs, except feral hogs may be taken with the aid of dogs during the month of February on Attakapas, Bodcau, Boeuf, Clear Creek, Dewey Wills, Jackson-Bienville, Little River, Pass a Loutre, Pearl River, Richard K. Yancey, Sabine, Sabine Island, and West Bay WMAs by self-clearing permit. All hogs must be killed immediately and may not be transported live under any conditions, except as allowed by permit from either the Minden, Lake Charles, Monroe, Pineville, Hammond or Opelousas offices. During the February dog season hunters may use centerfire pistols in addition to using guns allowed for season in progress. Additionally, feral hogs may be taken on Atchafalaya Delta, Pass-a-Loutre, Pointe-aux-Chenes and Salvador WMAs from February 16 through March 31 with shotguns loaded with buckshot or slugs or rimfire rifles no larger than .22 caliber. Additional requirements may be specified under individual WMAs, see regulation pamphlet.

16. Outlaw Quadrupeds and Birds. Consult regulations pamphlet. During hunting seasons specified on WMAs, except the turkey and spring squirrel seasons, take of outlaw quadrupeds and birds, with or without the use of electronic calls, is allowed by properly licensed hunters and only with guns or bows and arrows legal for season in progress on WMA. However, crows, blackbirds, grackles and cowbirds may not be taken before September 1 or after January 1. As described in 50 CFR Part 21, non-toxic shot must be used for the take of crows, blackbirds, cowbirds and grackles under the special depredation order. In addition an annual report has to be submitted to the U.S. Fish and Wildlife Service for those that participate in the take of these species.

17. WMAs Hunting Schedule and Regulations

a. Alexander State Forest. From December through February all hunters must check daily with the Office of Forestry for scheduled burning activity. No hunting or other activity will be permitted in burn units the day of the burning. Call (318) 487-5172 or (318) 487-5058 for information on burning schedules. Vehicles restricted to paved and graveled roads. No parking on or fishing or swimming from bridges. No open fires except in recreation areas.

b. Atchafalaya Delta. Water control structures are not to be tampered with or altered by anyone other than employees of LDWF. All-terrain vehicles, motorcycles, horses, and mules prohibited except as permitted for authorized WMA trappers. Mudboats or air-cooled propulsion engines powered by more than 36 total horsepower are prohibited on the WMA. Limited access area, no internal combustion engines allowed from September through January. See WMA map for specific locations.

c. Bayou Macon. All night activities prohibited except as otherwise provided.

d. Big Colewa Bayou. All nighttime activities prohibited.

e. Big Lake. Use of nets, yoyos, and trotlines prohibited on Big and Chain Lakes.

f. Biloxi. ATVs, UTVs, motorcycles, horses, and mules are prohibited. Mud boats or air-cooled propulsion vessels can only be powered by straight shaft "long tail" air-cooled mud motors that are 16 total horsepower or less on the WMA. All other types of mud boats or air cooled propulsion vessels (including "surface drive" boats) are prohibited. All ATVs, UTVs, and motorcycles are prohibited.

g. Bodcau-towable watersports not allowed in Ivan Lake. Nets and traps prohibited on Ivan Lake.

h. Camp Beauregard. Daily military clearance required for all recreational users. Retriever training allowed on selected portions of the WMA. Contact the LDWF field office for specific details.

i. Dewey W. Wills. Crawfish: 100 pounds per person per day.

j. Elbow Slough. Non-toxic shot (minimum size #6) only for all hunting. All motorized vehicles prohibited.

k. Elm Hall. No ATVs or UTVs allowed.

l. Fort Polk. Daily military clearance required to hunt or trap. New special regulations apply to ATV users.

m. Grassy Lake. Commercial Fishing: Permitted except on Smith Bay, Red River Bay and Grassy Lake proper on Saturday and Sunday and during waterfowl season. Permits available from area supervisor at Spring Bayou headquarters or Opelousas field office. No crawfishing traps or nets may be left overnight. No hunting in restricted area.

n. Joyce. Swamp Walk: no loaded firearms or hunting allowed within 100 yards of walkways. Crawfish: 100 pounds per person per day.

o. Lake Boeuf. Hunting allowed until 12 noon on all game, except deer may be hunted until one-half hour after sunset. All nighttime activities prohibited. All-terrain vehicles, motorcycles, horses, and mules are prohibited.

p. Lake Ramsay. Foot traffic only—all vehicles restricted to parish roads.

q. Manchac. Crabs: no crab traps allowed. Attended lift nets are allowed.

r. Maurepas Swamp. No loaded firearms or hunting allowed within 100 yards of nature trail. Crawfish: 100 pounds per person per day.

s. Ouachita. Waterfowl Refuge: north of LA 15 closed to all hunting, fishing and trapping and ATV/UTV use during duck season including early teal season, except hunting allowed during waterfowl falconry season. Crawfish: 100 pounds per person per day limit. Night crawfishing prohibited. No traps or nets left overnight. All nighttime activities prohibited except as otherwise provided.

t. Pass-a-Loutre. Commercial Fishing: same as outside. Commercial mullet fishing open only in: South Pass, Pass-a-Loutre, North Pass, Southeast Pass, Northeast Pass, Dennis Pass, Johnson Pass, Loomis Pass, Cadro Pass, Wright Pass, Viveats Pass, Cognevich Pass, Blind Bay, Redfish Bay, Garden Island Bay, Northshore Bay, East Bay (west of barrier islands) and oil and gas canals as described on the LDWF Pass-a-Loutre WMA map. All ATVs, UTVs, motorcycles, horses, and mules prohibited on this area. Oyster harvesting is prohibited. Mudboats or air-cooled propulsion engines powered by more than 36 total horsepower are prohibited on the WMA. Limited access area, no internal combustion engines allowed from September through January. See WMA map for specific locations.

u. Pearl River. All roads closed 8 p.m. to 4 a.m. to all vehicles. Old Hwy. 11 will be closed when river gauge at

Pearl River, Louisiana, reaches 16.5 feet. All hunting except waterfowl will be closed when the river stage at Pearl River reaches 16.5 feet. No hunting in the vicinity of nature trail. Observe "No Hunting" signs. Rifle range open Friday, Saturday and Sunday with a fee. Type A personal water craft, model year 2003 and beyond, which are eight feet in length and greater, may be operated in the areas of Pearl River wildlife management area, south of U.S. 90 from April 1 until the Monday of Labor Day weekend, from sunrise to sunset only. No person shall operate such water craft at a speed greater than slow/no wake within 100 feet of an anchored or moored vessel, shoreline, dock, pier, persons engaged in angling or any other manually powered vessel. Crawfish: 100 pounds per person per day.

v. Peason Ridge. Daily military clearance required to hunt or trap. Special federal regulations apply to ATV users.

w. Pointe-aux-Chenes. Hunting until 12 noon on all game, except for mourning dove hunting and youth lottery deer hunt as specified in regulation pamphlet. Point Farm: gate will be open all weekends during month of February. No motorized vessels allowed in the drainage ditches. Recreational fishing: shrimp may be taken by the use of cast nets only. During the inside open shrimp season, 25 pounds per boat per day (heads on) maximum shall be allowed. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. All castnet contents shall be contained and bycatch returned to the water immediately. Oyster harvesting is prohibited. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none are to remain set overnight. Twelve dozen crabs maximum are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the WMA and shall be limited to 100 pounds per person per day. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. All boats powered by engines having total horsepower above 25 h.p. are not allowed in the Grand Bayou, Montegut and Pointe-aux-Chenes water management units. Public is permitted to travel anytime through the WMA for access purposes only, in the waterways known as Grand Bayou, Humble Canal, Little Bayou Blue, Grand Bayou Blue, St. Louis Canal and Bayou Pointe-aux-Chenes unless authorized by the LDWF. All other motorized vehicles, horses and mules are prohibited unless authorized by the LDWF. Limited access area, no internal combustion engines allowed from September through January. See WMA map for specific locations. All ATVs, UTVs, motorcycles, horses, and mules prohibited.

x. Pomme de Terre. Commercial Fishing: permitted Monday through Friday, except closed during duck season. Commercial fishing permits available from area supervisor, Opelousas field office or Spring Bayou headquarters. Sport fishing: same as outside except allowed only after 2 p.m. only during waterfowl season. Crawfish: March 15-July 31, recreational only, 100 lbs. per person per day. No crawfishing traps or nets may be left overnight.

y. Richard K. Yancey. Recreational Crawfishing: west of the Mississippi River Levee March 15-July 31. 100 pounds per person per day. No traps or nets left overnight. No motorized watercraft allowed.

z. Russell Sage. Transporting trash or garbage on WMA roads is prohibited. All nighttime activities prohibited except as otherwise provided. On Wham Brake, all nighttime activity prohibited during open waterfowl seasons. Internal combustion engines and craft limited to 10 h.p. rating or less in the Greentree Reservoirs.

NOTE: All season dates on Chauvin Tract (U.S. 165 North) same as outside, except still hunt only and except deer hunting restricted to archery only. All vehicles including ATVs prohibited.

aa. Sabine Island. Sabine Island boundaries are Sabine River on the west, Cut-Off Bayou on the north, and Old River and Big Bayou on the south and east.

bb. Salvador/Timken. Hunting until 12 noon only for waterfowl. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season, 25 pounds per boat per day (heads on) maximum shall be permitted. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) maximum may be taken for bait. All castnet contents shall be contained and bycatch returned to the water immediately. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none of the lines are to remain set overnight. Twelve dozen crabs maximum are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the WMA and shall be limited to 100 pounds per person per day. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Use of mudboats powered by internal combustion engines with more than four cylinders is prohibited. Pulling boats over levees, dams or water control structures or any other activities which cause detriment to the integrity of levees, dams and water control structures is prohibited. Limited access area, no internal combustion engines allowed from September through January. See WMA map for specific locations.

cc. Sandy Hollow. Bird Dog Training: consult regulation pamphlet. Wild birds only (use of pen-raised birds prohibited). Bird dog field trials: permit required from Hammond field office. Horseback riding: self-clearing permit required. Organized trail rides prohibited. Riding allowed only on designated roads and trails depicted on WMA map. Horses and mules are specifically prohibited during turkey and gun season for deer except as allowed for bird dog field trials. No horses and mules on green planted areas. Horse-drawn conveyances are prohibited.

dd. Sherburne. Crawfishing: recreational crawfishing only. Crawfish harvest limited to 100 pounds per person per day. No traps or nets left overnight. No motorized watercraft allowed on farm complexes. Retriever training allowed on selected portions of the WMA. Contact the Opelousas field office for specific details. Vehicular traffic prohibited on Atchafalaya River levee within Sherburne WMA boundaries. Rifle and pistol ranges open daily. Skeet ranges open by appointment only, contact Hunter Education office. No trespassing in restricted area behind ranges.

NOTE: Atchafalaya National Wildlife Refuge, and U.S. Army Corps of Engineers land holdings adjacent to the Sherburne

WMA will have the same rules and regulations as Sherburne WMA. No hunting or trapping in restricted area.

ee. Soda Lake. No motorized vehicles allowed. Bicycles allowed. All trapping and hunting prohibited except archery hunting for deer and falconry. Closed to fishing west of Twelve Mile Bayou from October 1-March 31.

ff. Spring Bayou. Commercial Fishing: permitted Monday through Friday except slat traps and hoop nets permitted any day and except gill or trammel nets or the take or possession of grass carp are prohibited. Permits available from area supervisor or Opelousas field office. Closed until after 2 p.m. during waterfowl season. Sport fishing: same as outside except allowed only after 2 p.m. during waterfowl season. Crawfish: recreational only, limit 100 pounds per person per day. No hunting allowed in headquarters area. Only overnight campers allowed in the improved Boggy Bayou camping area. Rules and regulations posted at camp site. A fee is assessed for use of this campsite. Water skiing allowed only in Old River and Grand Lac.

gg. Sicily Island Hills. Fishing restricted to rod and reel, and pole fishing only. All other gear prohibited.

hh. Tangipahoa Parish School Board. No horseback riding during gun season for deer or turkey. ATVs/UTVs are not allowed except as otherwise specified.

ii. Thistlethwaite. All motorized vehicles restricted to improved roads only. All users must enter and leave through main gate only.

jj. Tunica Hills. Camping limited to tents only in designated area.

kk. Union. All nighttime activities prohibited except as otherwise provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115 and R.S. 56:116.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:1279 (July 1999), amended LR 26:1494 (July 2000), LR 27:1049 (July 2001), LR 28:1603 (July 2002), LR 29:1124 (July 2003), repromulgated LR 29:1522 (August 2003), amended LR 30:1495 (July 2004), LR 31:1611 (July 2005), LR 32:1251 (July 2006), LR 33:1382 (July 2007), LR 34:1429 (July 2008), LR 35:1264 (July 2009), LR 36:1566 (July 2010), LR 37:2190 (July 2011), LR 38:1732 (July 2012), LR 40:1540 (August 2014), LR 41:

§113. General and WMA Turkey Hunting Regulations

A. General Regulations. Only gobblers (male turkeys) may be taken. Taking of hen (female) turkeys, including bearded hens, is prohibited; still hunting only. Use of dogs, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot, and approved archery equipment but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited. The running of coyote with dogs is prohibited in all turkey hunting areas during the open turkey season. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys. A baited area is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closures. No person hunting turkeys more than 200 yards from a baited area will be in violation of the turkey baiting regulation.

B. Tags

1. Prior to hunting turkeys, all turkey hunters, regardless of age or license status, must obtain turkey tags and have them in their possession while turkey hunting. Immediately upon killing a turkey, hunters must attach a carcass tag to the turkey before it is moved from the site of the kill and must document the kill on the turkey harvest report card. The date of kill and parish of kill must be recorded on the carcass tag. The tag must remain attached to the turkey while kept at camp or while it is transported to the domicile of the hunter or to a cold storage facility. Hunters who keep the carcass or meat at a camp must also comply with game possession tag regulations. Within seven days of the kill, the hunter must report the kill. Hunters may report turkeys by calling the validation phone number or using the validation website.

2. Turkey hunters purchasing licenses by phone or internet will be given an authorization number and a LDWF identification number that will serve as their license and tags until the physical license and tags arrive by mail. Turkey hunters who have purchased a license with tags, but have not yet received their physical license and tags, must immediately tag their kill with a possession tag before moving it from the site of the kill. The authorization number and LDWF identification number must be recorded on the possession tag. Hunters must retain documentation of any turkeys killed and upon receiving their physical tags and harvest report card, validate their kill as required in these regulations. The tags for turkeys killed prior to receiving the physical tags must be removed from the turkey harvest report card and discarded.

3. Tags removed from the turkey harvest report card prior to killing a turkey are no longer valid and if lost will not be replaced. Duplicate tags and turkey harvest report cards are available to replace lost report cards and attached tags. Hunters will be charged a fee for duplicate turkey harvest report cards and tags. Hunters that have killed a turkey prior to losing their remaining tag and harvest report card must remove and discard the duplicate tag to account for the original tag that was used and validated. Hunters must record any previously validated turkey on the duplicate turkey harvest report card.

C. Possession of Live Wild Turkeys. No person shall take live wild turkeys or their eggs from the wild. No person shall possess captive live wild turkeys, (*Meleagris gallopavo silvestris, M.g. osceola, M.g. intermedia, M.g. merriami, M.g. mexicana*) or their eggs, regardless of origin, without a valid game breeder license. No penraised turkeys from within or without the state shall be liberated (released) within the state.

D. Statewide Youth and Physically Challenged Season Regulations. Only youths 17 years of age or younger or hunters possessing a physically challenged hunter permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful

completion of a hunter safety course. Youths must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for youth younger than 16 years of age. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times, except properly licensed youths 16-17 years old and youths 12 years old or older who have successfully completed a hunter safety course may hunt without a supervising adult. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their season bag limit of two.

E. Shooting Hours—one-half hour before sunrise to one-half hour after sunset.

F. Turkey Hunting Area Descriptions

1. Area A

a. All of the following parishes are open:

i. Beauregard;

ii. Bienville;

iii. Claiborne;

Exception: see federal lands hunting schedule for Kisatchie National Forest dates.

iv. East Baton Rouge;

v. East Feliciana;

vi. Grant;

Exception: see federal lands hunting schedule for Kisatchie National Forest dates;

vii. Jackson;

viii. LaSalle;

ix. Lincoln;

x. Livingston;

xi. Natchitoches;

Exception: see federal lands hunting schedule for Kisatchie National Forest dates.

xii. Pointe Coupee;

Exception: see Sherburne WMA for special season dates on all state, federal, and private lands within Sherburne boundaries.

xiii. Rapides;

Exception: see federal lands hunting schedule for Kisatchie National Forest dates.

xiv. Sabine;

xv. St. Helena;

xvi. Tangipahoa;

xvii. Union;

xviii. Vernon;

Exception: see federal lands hunting schedule for Kisatchie National Forest dates.

xvix. West Baton Rouge;

xx. West Feliciana (including Raccourci Island);

xxi. Winn.

Exception: see federal lands hunting schedule for Kisatchie National Forest dates.

b. Portions of the following parishes are also open:

i. Allen—north of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;

ii. Avoyelles—that portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the west Atchafalaya Basin protection levee southward;

iii. Calcasieu—north of I-10;

iv. Caldwell—west of Ouachita River southward to Catahoula Parish line;

v. Catahoula—south and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line, also that portion lying east of LA 15;

vi. Evangeline—north and west of LA 115, north of LA 106 west of LA 115 to US 167, west of US 167 south to LA 10, north of LA 10 west of US 167 to LA 13, west of LA 13 south of LA 10 to Mamou and north of LA 104 west of Mamou;

vii. Franklin—that portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;

viii. Iberville—west of the Mississippi River;

Exception: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

ix. Jefferson Davis—north of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;

x. Madison—that portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;

xi. Morehouse—west of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;

xii. Ouachita—all west of the Ouachita River. That portion east of the Ouachita River lying north of US 80;

xiii. Richland—that portion south of US 80 and east of LA 17;

xiv. St. Landry—that portion bounded on the west by the west Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River;

Exception: the Indian Bayou area; see federal lands hunting schedule for Indian Bayou area dates.

xv. Upper St. Martin—all within the Atchafalaya Basin;

Exceptions: Sherburne WMA and Indian Bayou area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see federal lands hunting schedule for Indian Bayou dates.

xvi. Tensas—that portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry; also all lands east of the main channel of the Mississippi River.

2. Area B

a. All of the following parishes are open:

i. Ascension;

ii. DeSoto;

iii. Red River;

iv. St. Tammany;

v. Washington.

b. Portions of the following parishes are open:

i. Bossier—all open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish line;

ii. Caddo—all except that portion north of I-20 from the Texas state line to I-220. west of I-220 to LA 1. west of LA 1 to Caddo Lake, south of Caddo Lake to the Texas state line;

iii. East Carroll—east of US 65 from Arkansas state line to Madison Parish line;

iv. Iberville—all east of the Mississippi River;

v. Webster—all open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line.

Exception: see federal lands hunting schedule for Kisatchie National Forest dates.

3. Area C

a. All of the following parishes are open:

i. Concordia.

b. Portions of the following parishes are open:

i. Caldwell—all east of the Ouachita River;

ii. Catahoula—all of the parish except for that portion located in area A;

iii. Franklin—west of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;

iv. Iberia—east of the west Atchafalaya Basin protection levee;

v. Richland—west of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;

vi. Tensas—east and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

4. Turkey season dates on wildlife management areas, national wildlife refuges, Kisatchie National Forest and U.S. Army Corps of Engineers land located within areas A, B, and C may vary from the season set for the parish in which they are located. Seasons for these lands are specified in LAC 76:XIX.115.

G. WMA Turkey Hunting Regulations

1. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants, shooting range use, and fishing on the day(s) of the youth hunt.

2. Self-Clearing Permits—all turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

3. Lottery Hunts—all or portions of some WMA seasons are designated as lottery hunts and are restricted to hunters selected by pre-application lottery. To apply for these lottery hunts, a hunter must submit a completed official application form to the Baton Rouge office by the deadline printed on the application. A non-refundable fee of $5 must be sent with each application. Applicants for WMA youth hunts must be 17 years of age or younger and at least 8 years old on the day of the hunt. Applicants may submit only one application and may be selected for only one spring WMA turkey lottery hunt annually, except, youths may also apply for the regular WMA turkey lottery. Submitting more than one application per lottery type will result in disqualification. Hunters must abide by self-clearing permit requirements. Hunters chosen for WMA lottery hunts may be accompanied by one person. The person accompanying a lottery hunter shall not possess a firearm/bow or take a turkey, and must remain within a distance that allows normal voice contact with the lottery hunter at all times. Youths chosen for special youth only hunts may be assigned a guide on the day of the hunt provided that guides are available. One person may accompany the youth and guide, but may not hunt.

4. WMA Physically Challenged Hunt (wheelchair confined)—open only to hunters with a physically challenged hunter permit with wheelchair classification. During this hunt, ATVs may be used by hunters on all designated ATV trails in accordance with the physically challenged hunter permit. Hunters must abide by self-clearing permit requirements.

5. Rules Specific to Certain WMAs

a. Sandy Hollow. No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

b. Sherburne. All turkeys taken must be checked at the WMA headquarters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November 2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2469 (November 2007), LR 35:91 (January 2009), LR 35:2478 (November 2009), LR 36:2581 (November 2010), LR 37:3535 (December 2011), LR 38:2941 (November 2012), LR 40:1554 (August 2014), LR 41:

§115. Turkey Hunting Areas, Seasons, and Bag Limits

A. Daily limit is one gobbler. Season limit is two gobblers. Turkeys taken on WMAs are part of the season bag limit. Only one turkey may be taken during spring WMA lottery hunts.

B. Turkey season will open on the fourth Saturday in March. The area A turkey season will be 30 consecutive days in length, the area B turkey season will be 23 consecutive days in length, and the area C turkey season will be 16 consecutive days in length. Wildlife management areas, national forests, national wildlife refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the fourth Saturday in March falls the day before Easter.

C. Statewide youth turkey and physically challenged season on private lands shall be the weekend prior to the start of the regular turkey season.

D. Only those wildlife management areas listed herein are open to turkey hunting. All other wildlife management areas are closed.

E. 2016 Turkey Hunting Schedule

Area	Season Dates
A	March 26-April 24
B	March 26-April 17
C	March 26-April 10

Area	Season Dates
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 19-20

F. Wildlife Management Area Turkey Hunting Schedule

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Attakapas	March 26-April 3	None
Bayou Macon	None	April 16-17
Big Lake	March 26-April 10	None
Bodcau	March 26-April 10	None
Boeuf	March 26-April 10	None
Camp Beauregard	March 26-April 3	None
Clear Creek	April 4-24	March 26-27 April 2-3
Dewey Wills	None	March 26-27 April 2-3
Fort Polk-Vernon	March 26-April 24	None
Grassy Lake	March 26-April 3	None
Hutchinson Creek	March 26-April 24	None
Jackson-Bienville	March 26-April 10	None
Lake Ramsey	March 26-April 10	None
Little River	March 26-April 10	None
Loggy Bayou	None	April 15-17
Pearl River	None	March 26-27
Peason Ridge	March 26-April 24	None
Pomme de Terre	April 20-April 24	None
Richard K. Yancey	March 26-April 10	None
Sabine	None	April 1-3 April 15-17
Sandy Hollow	March 26-April 10	None
Sherburne	March 28-30	March 26-27
Sicily Island	None	March 26-28 March 29-31 April 1-3 April 4-6 April 7-10
Tangipahoa Parish School Board	March 26-April 24	None
Tunica Hills	April 11-17	March 26-27 April 2-3 April 9-10
Union	April 4-10	April 2-3
Walnut Hills	March 26-April 24	None
West Bay	None	March 26-27 April 2-3 April 9-10

G. Wildlife Management Area Lottery Youth Hunts

WMA/Ranger District	Lottery Youth Hunt Date
Bodcau	March 19-20
Clear Creek	March 19
Fort Polk-Vernon/Peason Ridge	March 19
Grassy Lake	March 19
Jackson-Bienville	March 19-20
Loggy Bayou	April 9-10
Pearl River	March 19
Pomme de Terre	April 9-10
Richard K. Yancey	March 19-20
Sherburne	March 19
Sicily Island	March 19
Spring Bayou	April 9-10
Tunica Hills	March 19
Union	March 19-20
West Bay	March 19

H. Non-Lottery WMA Youth Hunts

1. Big Lake will be open March 19-20 (only youths may hunt).

2. Bodcau WMA will be open April 16-17 (only youths may hunt).

3. Jackson-Bienville WMA will be open April 16-17 (only youths may hunt).

I. Wildlife Management Area Physically Challenged (Wheelchair Confined) Hunt

1. Jackson-Bienville WMA will be open April 18-24 to holders of valid physically challenged hunter (wheelchair classification) permits.

J. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) turkey hunting schedule: (youth only) March 19-20 on all Ranger Districts (except Vernon Unit lands within Ft. Polk-Vernon WMA) Caney Ranger District, March 26-April 10; all remaining KNF lands, March 26-April 17 (including Catahoula and Red Dirt National Wildlife Management Preserves, except self-clearing permit required to hunt turkey on Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers turkey hunting schedule: Indian Bayou area, March 19-20 youth and physically challenged lottery only hunt, and lottery hunt only on March 26-27 and April 2-3, and open April 9-10. Old River Control and Lock Areas, March 26-April 10.

3. National wildlife refuges: Bogue Chitto NWR, March 26-April 17, March 19-20 (youth only); Lake Ophelia NWR, March 19 (youth lottery only), March 26-April 10 hunt ends at 12 p.m. each day; Tensas NWR, March 19-20 (youth only), March 26-April 10; Upper Ouachita NWR, March 19 (youth lottery only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2513 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2470 (November 2007), LR 35:90 (January 2009), LR 35:2481 (November 2009), LR 36:2583 (November 2010), LR 37:3541 (December 2011), LR 38:2944 (November 2012), LR 40:1556 (August 2014), LR 41:

Family Impact Statement

In accordance with Act #1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments relative to the proposed Rule until 4:30 p.m., Thursday, April 2, 2015 to Steve Smith, Wildlife Division, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA, 70898-9000, or via email to ssmith@wlf.la.gov.

Public Hearing

Public hearings will be held at the following locations: February 23 beginning at 6 p.m., LDWF Woodworth Outdoor Education Center, 661 Robinson Bridge Road, Woodworth; February 24 beginning at 6:00 p.m., Ruston Civic Center, 401 North Trenton Street, Ruston; February 24 beginning at 6:30 p.m., LSU Ag Center (next to Burton Coliseum), 7101 Gulf Highway, Lake Charles; February 24 beginning at 6:30 p.m., Natchitoches Event Center, 750 Second Street, Natchitoches; February 25 beginning at 6:00 p.m., Caldwell Parish Courthouse, 201 Main Street, Columbia; February 26 beginning at 6:30 p.m., Slidell Municipal Auditorium, 2056 Second Street, Slidell. Also, comments will be accepted at regularly scheduled Wildlife and Fisheries Commission meetings from February through April.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including, but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Billy Broussard
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Resident Game Hunting Season and Game Birds and Animals, General and Wildlife Management Area Provisions and Turkey Hunting Provisions, Areas, Seasons, and Bag Limits

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The various proposed rule changes will have no impact on state or local governmental units. The proposed rule change adjusts the calendar for resident game and turkey hunting, bans the possession of bait on wildlife management areas (W.M.A.s) except in vehicles traversing or parked along W.M.A. roads, and addresses the absorption of Deer Area 5 into Deer Area 1.

The proposed rule change permits the training of bird dogs in some Small Game Emphasis Areas on W.M.A.s.

The proposed rule change contains alterations to the gear and practices fishermen can use on certain specific bodies of water in Bodcau, Big Lake, Grassy Lake, Pomme de Terre, and Sicily Island Hills W.M.A.s. The rule change specifies a 100-pound per person per day limit on crawfish harvested in Joyce and Maurepas Swamp W.M.A.s

The proposed rule change clarifies the methods and equipment hunters can use on W.M.A.s when hunting hogs.

The proposed rule change allows certain utility terrain vehicles (U.T.V.) on all-terrain vehicle (A.T.V.) trails and on certain roads, when allowed within W.M.A.s.

The proposed rule change clarifies the requirements, rules, and districts open during youth hunting events in deer and turkey season. The proposed rule change clarifies acceptable forms of honorably discharged status for Youth and Honorably Discharged Veterans season on private lands.

The proposed rule change prohibits all nighttime activity on Wham Brake W.M.A. during open waterfowl season.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to have no impact on revenue collections of the state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change may have minimal economic impact on persons and non-governmental entities.

The proposed rule change regarding calendar adjustments, identification requirements, approved equipment, and acceptable hunting methods for turkey, deer, and hog hunters is not anticipated to have any economic impact on hunters. The proposed rule change banning possession of bait on W.M.A.s will have no fiscal impact on persons with bait as it is not required that the bait be destroyed when on a W.M.A., but remain stored in the vehicle driven to the W.M.A.

The proposed rule change allowing certain U.T.V.s on A.T.V. trails and the proposed rule change regarding dog training in Small Game Emphasis Areas are not expected to have any fiscal impact on U.T.V. enthusiasts or dog trainers, respectively.

The proposed rule change containing alterations to the gear and practices fishermen can use on certain specific bodies of water in Bodcau, Big Lake, Grassy Lake, Pomme de Terre, and Sicily Island Hills wildlife management areas (W.M.A.s) are not expected to have any economic impact as relatively few fishermen utilize the practices and gear discussed.

The proposed rule change that prohibits the keeping of crawfish traps or nets overnight on Grassy Lake W.M.A. and Pomme de Terre W.M.A. may negatively affect some commercial fishermen who harvest wild crawfish on these W.M.A.s by increasing costs and potentially lowering yield. Because the amount of crawfishing effort expended on these W.M.A.s in recent years is relatively low, according to L.D.W.F. records, the effect of the proposed rule change is expected to be relatively minor. The proposed rule change limiting crawfish harvests on Joyce W.M.A. and Maurepas Swamp W.M.A. is a clarification of an established rule with no expected effect on persons or groups.

The proposed prohibition on nighttime activities on Wham Brake in Russell Sage W.M.A. during open waterfowl season is not expected to have any economic impact on sportsmen.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule changes.

Bryan McClinton
Undersecretary
1501#041

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Workforce Commission
Plumbing Board

Water Supply Protection Specialists Recertification Requirements (LAC 46:LV.1003)

The Louisiana state Plumbing Board (board), pursuant to R.S. 37:1366(I), which authorizes the board to establish and determine by rule minimum requirements relative to continuing professional development for the renewal or reinstatement of any license or special endorsement issued by the board, proposes to amend the plumbing regulations,

LAC 46:LV.1003, in accordance with the Administrative Procedure Act. The proposed rule change allows the board to accept proof of attendance at a board-approved industry related recertification program compliant with the guidelines of the American Society of Sanitary Engineers (ASSE) series *5000/5110 Professional Qualification Standards* or its equivalent, effective upon final publication in the *Louisiana Register*.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LV. Plumbers
Chapter 10. Continuing Professional Education Programs
§1003 Water Supply Protection Specialists Recertification Requirements

A. Effective January 1, 2015, in addition to the yearly renewal of their endorsement, every three years all persons holding a water supply protection specialist endorsement issued by the Louisiana state Plumbing Board are required to show proof of attendance at a board-approved industry related recertification program compliant with the guidelines of the American Society of Sanitary Engineers (ASSE) series *5000/5110 Professional Qualification Standards* or its equivalent as defined in §310(D). Such recertification shall satisfy the endorsee's obligation to maintain continuing professional education relative to a water supply protection specialist endorsement, but shall not diminish or affect endorsee's obligation to fulfill continuing professional education requirements for journeyman or master plumbing licenses or medical gas installer or verifier endorsements, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2071 (September 2004), amended LR 37:905 (March 2011), LR 37:2441 (August 2011), amended by the Workforce Commission, Plumbing Board, LR 41:

All currently stated rules of the board, unless amended herein, shall remain in full force and effect.

Family Impact Statement

1. Estimated effect on the stability of the family? There is no estimated effect on the stability of the family.

2. Estimated effect on the authority and rights of parents regarding the education and supervision of their children? There is no estimated effect on the authority and rights of parents regarding the education and supervision of their children.

3. Estimated effect on the functioning of the family? There is no estimated effect on the functioning of the family.

4. Estimated effect on family earnings and family budget? There is no estimated effect on family earnings and family budget.

5. Estimated effect on the behavior and personal responsibility of children? There is no estimated effect on the behavior and personal responsibility of children.

6. Estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule? There is no estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed amended Rule will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

The proposed amended Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed amended Rule is not anticipated to have any impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Any interested person may submit written comments regarding the content of this proposed Rule change to John Barker, Executive Director, 12497 Airline Highway, Baton Rouge, LA 70817, no later than 5 p.m., February 20, 2015.

John Barker
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Water Supply Protection Specialists Recertification Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs to State or local governmental units. The proposed amendment to the rule seeks to clarify the language regarding the recertification of Water Supply Protection Specialist endorsement by referring licensees to the American Society of Sanitation Engineers (ASSE) standards rather than those of the Louisiana State Plumbing Board (LSPB). LSPB has always followed ASSE qualification standards and guidelines. However, the LSPB would publish the ASSE guidelines only to rewrite and republish the standards when ASSE made any alterations. Due to the proposed rule change, rather than consistently republishing alterations, LSPB can direct members to the ASSE as their primary source for information. A Water Supply Protection Specialist is the only endorsement that allows for the testing and repair of water backflow prevention equipment. This endorsement is not necessary to obtain a plumbing license in Louisiana.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local governmental units

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated cost or economic benefit for affected persons resulting from the proposed amendment to this rule. It simply clarifies the continuing training and recertification that will be acceptable for maintaining a specific endorsement to a plumbing license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition and employment.

Louis L. Robein
Board Attorney
1501#072

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: January-December 2014

LAC Title	Part #.Section #	Action	Location: Month	LR 40 Page#
4	III.1111	Amended	Dec.	2574
	V.Chapter 15 (PPM)	Amended	June	1052
	V.Chapter 47 (PPM)	Adopted	Sept.	1646
7	XIII.Chapters 1-11	Amended	April	743
	XIII.107,145,303	Repealed	April	743
	XIII.Chapter 7	Repromulgated	May	992
	XV.127	Amended	July	1308
	XV.123,303,307-313,315,319-323	Amended	Aug.	1516
	XV.301	Adopted	Aug.	1516
	XV.325,327	Repealed	Aug.	1516
	XV.Chapters 5-7	Repromulgated	May	926
	XXI.Chapters 1-23	Repromulgated	May	926
	XXIX.Chapter 1	Amended	April	757
10	XV.1303,1315 (HCR No. 3)	Amended	June	1225
	XIX.Chapters 1-3	Amended	July	1387
13	I.701-749	Amended	Mar.	490
	I.751	Adopted	Mar.	490
	I.Chapter 29	Amended	Aug.	1524
	I.2901-2905,2911	Amended	Jan.	49
	I.2913,2915	Adopted	Jan.	49
	I.3921-3933	Adopted	Nov.	2238
	I.3935,3937	Adopted	Nov.	2238
	III.101-115	Amended	Feb.	264
	III.131-145	Repealed	Feb.	264
19	VII.109,309	Amended	Feb.	273
	VII.7713,8713	Amended	Feb.	274
22	I.319	Amended	Nov.	2268
	I.321	Adopted	Dec.	2599
	I.331	Amended	Dec.	2600
	I.341	Amended	May	1010
	I.341	Repromulgated	June	1104
	I.401	Repealed	Nov.	2268
	V.101	Repealed	Jan.	57
	XI.108	Repealed	Jan.	57
	XI.511,701,705,1115,1301	Amended	Jan.	57
	XI.513,1113,1115	Amended	Aug.	1528
	XI.513,1113,1115	Repromulgated	Sept.	1695
	XI.903	Amended	Mar.	527
	XI.904-909	Repealed	Mar.	527
25	I.Chapter 13	Adopted	Sept.	1679
28	I.709	Amended	Nov.	2243
	III.901	Amended	Sept.	1687
	III.2301	Adopted	Sept.	1687
	IV.301,703,1701,1703	Amended	Jan.	53
	IV.301,1903	Amended	Feb.	281
	IV.701,705,805,1903	Amended	May	1002
	IV.1805	Amended	Jan.	52
	VI.315	Amended	Oct.	1926
	XXXIX.503	Amended	July	1332
	XXXIX.503,701,703	Amended	April	765
	XXXIX.503,705	Amended	Dec.	2533
	XXXIX.707	Amended	Nov.	2242
	XLI.1501	Adopted	July	1333
	XLIII.133	Amended	Dec.	2533
	XLV.105,107,307,701,1301	Amended	May	1001
	LXXIX.121	Amended	April	766
	LXXIX.2102	Amended	Feb.	275
	LXXIX.2102,2109,Chapter 23	Amended	Sept.	1682
	LXXIX.2109,2305,2309,2313,2317,2323	Amended	Dec.	2535
	LXXIX.2325,2329,2331,2337	Amended	Dec.	2535
	LXXXIII.301,303,409,413,517,521,603	Amended	July	1313
	LXXXIII.301,515,519,703-707,3901,3905	Amended	Dec.	2507
	LXXXIII.303,1101,1102,4301,4311	Amended	April	760
	LXXXIII.611,613,1301,2301,3101	Amended	July	1313
	LXXXIII.3301,3303,4101,4301,4317	Amended	July	1313
	LXXXIII.3503,3505	Amended	Nov.	2240
	LXXXIII.4310	Amended	Dec.	2507
	XCVII.Chapter 4	Adopted	Dec.	2531
	CXI.107,303,305,309,312,313,316,319,701	Amended	Dec.	2509
	CXI.113	Adopted	May	993
	CXI.701,3501	Amended	July	1319
	CXI.1301,1803,2000,2001,2035,2037,2501	Amended	Dec.	2509
	CXI.2003,2011,2012,2013,2014,2015,2016	Repealed	Dec.	2509
28	CXI.2039	Repealed	Dec.	2509
	CXI.2209	Adopted	July	1319
	CXI.2901,3303,3501	Amended	Dec.	2509
	CXIII.301,303,2303, 2503,2509,2511	Amended	Dec.	2516
	CXIII.2509	Amended	July	1320
	CXV.337,2305,2347	Amended	Dec.	2530
	CXV.523	Adopted	Nov.	2241
	CXV.701,2301,2303	Amended	April	763
	CXV.901,2319,2397	Amended	Dec.	2522
	CXV.1129	Adopted	Dec.	2529
	CXV.1302	Amended	Dec.	2529
	CXV.Chapter 23	Amended	May	994
	CXV.2314	Amended	Feb.	275
	CXV.2317	Repromulgated	Aug.	1528
	CXV.2317	Amended	Dec.	2530
	CXV.2317,2318	Amended	July	1328
	CXV.2318	Amended	Sept.	1679
	CXV.2318,2333,2337,2341,2345,2353	Amended	Dec.	2524
	CXV.2355,2361,2363,2369	Amended	Dec.	2524
	CXV.2905	Amended	Nov.	2241
	CXXXI.Chapters 2,3,6	Amended	Feb.	276
	CXXXI.243	Amended	Sept.	1680
	CXXXI.Chapter 5	Amended	July	1329
	CXXXI.601	Amended	Nov.	2242
	CXXXIX.103,105,505,1101,1103,1303	Amended	July	1320
	CXXXIX.309	Adopted	Dec.	2517
	CXXXIX.512	Amended	April	761
	CXXXIX.1503,1903,1905,2301,2303,2713	Amended	July	1320
	CXXXIX.2907	Repealed	July	1320
	CXXXIX.2909	Amended	July	1320
	CXLVII.303,325	Amended	April	761
	CLI.103,301-701,1101,1301	Amended	Dec.	2518
	CLIII.101,301,501,1101	Amended	Dec.	2520
	CLIII.501	Amended	Mar.	498
	CLV.303,311,501,505,703,705,1103,1107	Amended	Mar.	498
	CLV.1109	Amended	Mar.	498
	CLVII.Chapters 5,7	Amended	April	762
	CLXIII.Chapters 1-3	Adopted	July	1325
31	II.105	Amended	Feb.	372
32	VII.101,505,721	Amended	Nov.	2280
33	III.311	Amended	April	779
	III.506,507,2160,3003,5116,5122,5311	Amended	July	1333
	III.711,918	Amended	Sept.	1689
	III.2701-2707,2711-2725,2735,2739,2799	Amended	Mar.	500
	III.2741	Adopted	Mar.	500
	III.3003	Amended	Dec.	2540
	III.5151	Amended	Mar.	518
	III.5901	Amended	July	1333
	V.105,109	Amended	July	1336
	V.4999	Amended	Sept.	1691
	V.10107	Amended	Dec.	2608
	V.10303,10309	Amended	Feb.	371
	VII.303,407,513,517,519,527,709,717,719	Amended	Feb.	292
	VII.1303,1399,10313	Amended	Feb.	292
	IX.Chapter 11	Amended	Nov.	2243
	IX.Chapter 21	Amended	April	767
	IX.4901,4903	Amended	Sept.	1692
	XV.102,304,322,324,328,399,460,465,499	Amended	Feb.	282
	XV.102,304,322,328,410,417,431,499,573	Amended	July	1338
	XV.102,325,326,331,550,1519,1599,1731	Amended	Oct.	1926
	XV.713,763	Amended	July	1338
	XV.717,729,731,732,735,1302	Amended	Feb.	282
	XV.1733	Amended	Oct.	1926
34	V.Chapters 1-27	Repromulgated	Dec.	2547
	V.Chapters 3-33	Repromulgated	July	1346
	V.901,2503,2506,2521,2534,2545,2549	Amended	Dec.	2544
	V.2547,2589,2591,2592,2593,2594,2595	Repealed	Dec.	2544
	V.2587,3103	Amended	Dec.	2544
	V.2596	Repealed	Dec.	2544
35	I.1797	Amended	Mar.	528
37	XI.2100,2101,2103,2105,2107,2108,2109	Amended	Sept.	1702
	XI.2106,2113	Adopted	Sept.	1702
	XI.2111	Amended	Sept.	1702

LAC Title	Part #.Section #	Action	Location: Month	LR 40 Page#
37	XIII.Chapter 51	Amended	April	795
	XIII.5101,5117,5119	Adopted	April	795
	XIII.Chapter 145	Adopted	Dec.	2592
40	I.271	Amended	June	1163
	I.306,307,4119,4339,5101,5127,5157,5315	Amended	Feb.	374
	I.2001-2011,2015-2023,2103,2119,2203	Amended	June	1119
	I.2217,2303,2317	Amended	June	1119
	I.5321,5399	Amended	Feb.	374
	I.6631	Amended	Feb.	386
	IV.111	Amended	Feb.	374
	IV.303,364	Adopted	Feb.	374
	IV.317	Adopted	Mar.	549
	IV.365	Repealed	June	1118
	IV.371	Amended	June	1118
	IV.375	Adopted	Mar.	548
	IV.377	Adopted	April	806
42	III.120	Amended	July	1379
	III.401	Amended	July	1381
	III.2117,2325	Amended	July	1380
	III.4212	Amended	Nov.	2271
	III.4732	Adopted	Nov.	2270
	III.4733	Amended	Nov.	2271
	XI.Chapter 24	Amended	June	1108
	XI.Chapter 24	Repromulgated	July	1381
	XI.2405	Amended	July	1384
	XI.2405,2424	Amended	June	1105
	XI.2407,2424	Amended	June	1106
	XI.2409,2424	Amended	June	1107
	XI.2413,2424	Amended	July	1384
	XI.2415	Amended	June	1106
	XI.2415,2424	Amended	July	1386
	XI.2424	Amended	July	1385
	I.723	Amended	Dec.	2595
43	I.724	Amended	Jan.	88
	I.724	Amended	May	1010
	I.724	Amended	Dec.	2594
	I.Chapter 15	Amended	Oct.	1943
	XVII.Chapter 3	Adopted	Feb.	342
	XVII.Chapter 33	Adopted	Feb.	316
	XIX.121,137	Amended	Dec.	2596
	XIX.311,313	Amended	Dec.	2596
	XIX.Chapter 7	Amended	Nov.	2266
46	I.1315	Amended	Sept.	1693
	III.1117,1119	Amended	Dec.	2540
	III.1118	Adopted	Dec.	2540
	VIII.Chapter 3	Adopted	Oct.	1929
	VIII.Chapter 4	Adopted	Oct.	1932
	VIII.Chapter 5	Adopted	Oct.	1933
	VIII.Chapter 6	Adopted	Oct.	1931
	XXV.117,119,307,315,319,703,705,905	Amended	Feb.	303
	XXV.907,911	Amended	Feb.	303
	XXVII.321,322,601,603	Adopted	April	781
	XXIX.113,307,507,509,515-519,1103	Amended	Dec.	2574
	XXIX.119,1107	Repealed	Dec.	2574
	XXIX.319,321	Adopted	Dec.	2574
	XXIX.1505,1509,1511	Amended	Dec.	2574
	XXXIII.1202,1203	Amended	May	1006
	XXXIII.1206	Adopted	Aug.	1529
	XXXIII.Chapter 15	Amended	June	1094
	XXXIII.1508	Amended	Sept.	1696
	XXXIII.1709	Amended	April	783
	XXXIII.1809	Amended	May	1005
	XXXIV.Chapters 1-5	Repealed	Feb.	369
	XL.119,121,703,705,707	Amended	May	1003
	XL.122	Adopted	May	1003
	XLIII.Chapter 9	Amended	Dec.	2542
	XLIII.915	Adopted	Dec.	2542
	XLIII.1001	Amended	Sept.	1694
	XLV.Chapters 2,27,58	Adopted	July	1370
	XLV.7303-7307,7309,7311	Amended	Nov.	2246
	XLV.7308,7314	Adopted	Nov.	2246
	XLVII.937,939,1715	Amended	Dec.	2577
	XLVII.3328,4513	Amended	Nov.	2248
	XLVII.3341	Amended	Sept.	1696
	XLVII.Chapter 45	Amended	Jan.	59
	LI.107,503,801	Amended	Nov.	2249
	LI.107,503,801	Repromulgated	Dec.	2578
	LIII.1119,1124	Adopted	Nov.	2252
	LIII.1121,1123,1125,1127,1213,1503,1509	Amended	Nov.	2252
	LIII.1129	Repealed	Nov.	2252

LAC Title	Part #.Section #	Action	Location: Month	LR 40 Page#
46	LIII.Chapter 29	Amended	June	1095
	LXI.707,1305,1509	Amended	July	1388
	LXVI.Chapters 1,3,7,9,11,12,13	Amended	Nov.	2262
	LXVII.Chapter 19	Adopted	Nov.	2245
	LXVII.2501	Amended	Nov.	2244
	LXIX.Chapter 1	Amended	Feb.	301
	LXXX.703,705	Amended	May	1005
	LXXXV.301,303,307,700,702,801,803,816	Amended	Feb.	307
	LXXXV.501,505	Amended	Nov.	2258
	LXXXV.1103,1200,1201	Amended	Feb.	307
48	I.Chapter 19	Amended	Jan.	84
	I.Chapter 50	Amended	May	1007
	I.Chapter 95	Adopted	June	1099
	I.Chapter 161	Amended	Aug.	1522
	I.Chapters 187,189	Adopted	Dec.	2590
50	I.Chapter 13	Adopted	Dec.	2589
	I.Chapter 21	Adopted	April	784
	I.Chapters 31,33	Amended	Feb.	310
	I.3103	Amended	Nov.	2258
	I.3103,3105	Amended	June	1096
	I.3303,3503	Amended	Jan.	66
	I.8341-8349	Amended	Jan.	83
	I.8345	Repealed	Jan.	83
	II.Chapter 109	Repealed	Dec.	25
	II.20003	Amended	Mar.	541
	II.20010	Amended	April	794
	II.20025	Adopted	April	793
	II.20027	Adopted	Mar.	541
	III.2308	Adopted	Nov.	2260
	III.10305	Amended	Nov.	2260
	III.10305	Amended	Nov.	2260
	III.20305	Amended	Mar.	545
	III.20509	Amended	May	1008
	V.107	Adopted	Aug.	1530
	V.113	Adopted	June	1104
	V.551	Amended	Feb.	312
	V.551,967	Amended	Oct.	1941
	V.Chapter 9	Amended	Feb.	312
	V.Chapter 9	Repromulgated	Oct.	1940
	V.901-905,15105	Adopted	Feb.	315
	V.953	Repromulgated	Oct.	1939
	V.1125	Amended	Mar.	541
	V.1301-1305,1309	Amended	Sept.	1697
	V.1307	Repealed	Sept.	1697
	V.2501,2705,2707	Amended	April	790
	V.2701	Repealed	April	790
	V.2701	Adopted	Oct.	1935
	V.Chapter 29	Adopted	Nov.	2259
	V.5117	Amended	Nov.	2261
	V.5311,5511,5711,5911,6113	Amended	Mar.	542
	V.5313,5317,5513,5517,5713,5719,6115	Amended	Feb.	313
	V.5315,5515,5717,5915,6117	Amended	Sept.	1699
	V.5319,5519,5715,6127	Amended	Feb.	314
	V.6119	Amended	Feb.	313
	VII.32969	Amended	Dec.	2588
	IX.15109	Adopted	Aug.	1533
	IX.15145	Adopted	Nov.	2261
	IX.15151,15153	Adopted	Mar.	544
	XI.103,301	Amended	Aug.	1533
	XI.16301,16701	Amended	Jan.	82
	XV.6905	Amended	May	1007
	XV.7305	Amended	Nov.	2259
	XV.10505,10701	Amended	Sept.	1700
	XV.10505,10701	Amended	Sept.	1701
	XV.Chapter 111	Repealed	Sept.	1701
	XV.Chapter 119	Repealed	Sept.	1700
	XV.Chapter 161	Repealed	Aug.	1532
	XV.Chapter 163	Adopted	April	794
	XV.Chapters 251-257	Adopted	June	1097
	XXI.Chapter 1	Adopted	June	1098
	XXI.Chapter 5	Amended	Oct.	1936
	XXI.2301	Amended	April	791
	XXI.5301,5501,5701,5703,5705,5707,5709	Amended	Dec.	2583
	XXI.5503	Adopted	Dec.	2583
	XXI.5711	Repealed	Dec.	2583
	XXI.5713,5715,5719,5901,6101	Amended	Dec.	2583
	XXI.5717,5719	Adopted	Jan.	81
	XXI.6101	Amended	Jan.	81
	XXI.8101,8307,8313,9501	Amended	April	791
	XXI.8329,8601	Adopted	April	791
	XXI.11107	Amended	Mar.	539
	XXI.11107	Amended	Mar.	540

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50	XXI.11303,12101	Amended	Jan.	67
	XXI.13701-13709,13901-13929,14101	Amended	Jan.	68
	XXI.13931-13937	Adopted	Jan.	68
	XXI.14301	Amended	Jan.	68
	XXV.701	Amended	May	1006
	XXVII.325,353	Amended	July	1379
	XXVII.327,355	Adopted	Aug,	1530
	XXIX.123,991	Amended	Jan.	82
	XXIX.993	Adopted	Jan.	82
	XXXIII.1701	Adopted	Sept.	1697
	XXXIII.1701	Amended	Oct.	1934
	XXXIII.Chapter 161	Adopted	Aug,	1529
51	II.503	Amended	Oct.	1941
	VI.101,105	Amended	Oct.	1943
	IX.Chapter 3	Amended	May	1009
	XXIII.4513,4523	Amended	May	1008
52	I.1703	Amended	Sept.	1678
55	I.1505	Amended	Dec.	2608
	I.1575	Amended	Feb.	370
	I.Chapter 19	Amended	April	797
	I.2103,2107,2109,2117	Amended	June	1111
	I.2106	Adopted	June	1111
	III.Chapter 1	Amended	Jan.	90
	III.146,147	Amended	Dec.	2603
	III.155,156,157,185,187	Amended	Dec.	2603
	III.300,331,333,335	Adopted	Dec.	2602
	III.329	Adopted	Dec.	2607
	III.395,397	Adopted	Dec.	2607
	III.Chapter 4	Adopted	Dec.	2604
	VI.301,901	Amended	Dec.	2611
	VII.321	Amended	June	1114
	VII.323	Amended	June	1112
	VII.331	Adopted	June	1113
	VII.505,509	Amended	June	1113
	VII.Chapter 31	Amended	June	1114
58	III.Chapter 15	Adopted	Nov.	2272
61	I.1401	Amended	Jan.	91
	I.1907	Amended	Dec.	2611
	I.4907	Amended	Dec.	2615
	III.2505	Adopted	April	801
	V.101,304,703,907,1103,1307,1503,2503	Amended	Mar.	528
	V.3101	Amended	Mar.	528
67	III.1213,1229,5703-5709,5713-5729	Amended	Sept.	1675
	III.1259,5351	Amended	Aug.	1520
	III.1907,1987	Amended	July	1311
	III.5124	Adopted	Jan.	49
	III.5599	Adopted	April	759
	III.5727	Repealed	Sept	1675

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67	III.Chapter 73	Amended	Sept.	1674
	III.7302-7305,7311,7315,7317	Amended	Feb.	243
	III.7331-7335	Amended	Feb.	243
	III.7355-7365,7371	Amended	Feb.	253
	III.7372	Adopted	Feb.	253
	III.7385	Repealed	Feb.	253
	VII.Chapter 19	Repealed	Jan.	84
70	I.Chapter 15	Amended	May	1011
	XI.303	Amended	Oct.	1946
	XXV.Chapter 1	Repealed	Dec.	2597
	XXV.101-105	Adopted	Dec.	2597
73	I.303	Amended	Oct.	1945
	I.1703	Amended	June	1116
76	I.Chapter 7	Amended	April	804
	I.Chapter 7	Repromulgated	July	1390
	I.703	Amended	Dec.	2616
	I.704	Adopted	April	804
	III.320	Repealed	Jan.	94
	III.329	Amended	June	1117
	V.115	Amended	Dec.	2616
	V.135	Adopted	Nov.	2282
	V.321	Amended	Aug.	1534
	VII.Chapter 1	Amended	Oct.	1946
	VII.110	Amended	April	802
	VII.113	Repealed	Mar.	548
	VII.125	Amended	Mar.	548
	VII.131	Repealed	Mar.	548
	VII.133	Adopted	Oct.	1947
	VII.149	Amended	April	803
	VII.149	Amended	Aug.	1558
	VII.159	Repealed	Mar.	546
	VII.183	Repealed	Mar.	545
	VII.191	Repealed	April	803
	VII.197	Amended	Nov.	2285
	VII.335	Amended	Jan.	95
	VII.335	Repromulgated	June	1116
	VII.335	Amended	Nov.	2281
	VII.361	Amended	Jan.	101
	VII.367	Amended	Jan.	96
	VII.375	Adopted	Jan.	100
	VII.377	Amended	Jan.	94
	VII.379	Adopted	Feb.	373
	VII.701	Amended	Mar.	545
	VII.907	Amended	Mar.	546
	IX.Chapter 1	Amended	Mar.	546
	XIX.Chapter 1	Amended	Aug.	1534
	XIX.113	Amended	Jan.	96
	XIX.115	Amended	Jan.	99

Potpourri

POTPOURRI

Department of Children and Family Services
Division of Programs

Temporary Assistance for Needy Families (TANF)
Caseload Reduction

The Department of Children and Family Services hereby gives notice that, in accordance with federal regulations at 45 CFR 261.40, the Temporary Assistance for Needy Families (TANF) caseload reduction report for Louisiana is now available to the public for review and comment.

In order to receive a caseload reduction credit for minimum participation rates, the agency must submit a report based on data from the Family Independence Temporary Assistance Program (FITAP) and the Strategies to Empower People Program (STEP) containing the following information:

1. a listing of, and implementation dates for, all state and federal eligibility changes, as defined at §261.42, made by the state after FY 2005;
2. a numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures, or other analyses);
3. an overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;
4. an estimate of the state's caseload reduction credit;
5. a description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;
6. a certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from federal and state eligibility changes; and
7. a summary of all public comments.

Copies of the TANF caseload reduction report may be obtained by writing Brandy Bonney, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804-9065, by telephone at (225) 342-4096, or via e-mail at brandy.bonney@la.gov.

Written comments regarding the report should also be directed to Ms. Bonney. These must be received by close of business on February 19, 2015.

Suzy Sonnier
Secretary

1501#018

POTPOURRI

Office of the Governor
Coastal Protection and Restoration Authority

Public Hearings—State Fiscal Year 2016
Draft Annual Plan

Pursuant to R.S. 49:214.5.3(B)(2), the Coastal Protection and Restoration Authority is required to contact the parish governing authorities, regional flood protection authorities, levee districts, and the state legislators of the parishes in the coastal zone for the purpose of soliciting their comments and recommendations on the draft 2016 Annual Plan: Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana, as well as to notify them of the public hearing to be held in their area.

The following public hearings have been scheduled to receive comments and recommendations from the public and from elected officials on the "Fiscal Year 2016 Annual Plan: Integrated Ecosystem Restoration and Hurricane Protection in Coastal Louisiana".

Feb. 9	5:30 p.m. Open House 6 p.m. Public Meeting	New Orleans Mosquito, Termite and Rodent Control Board Training Room 2100 Leon C. Simon Drive New Orleans, LA 70122
Feb. 10	5:30 p.m. Open House 6 p.m. Public Meeting	Lake Charles Civic Center Jean Lafitte Room 900 Lakeshore Drive Lake Charles, LA 70601
Feb. 11	5:30 p.m. Open House 6 p.m. Public Meeting	Houma Terrebonne Civic Center Room 3 346 Civic Center Boulevard Houma, LA 70360

The CPRA will receive written comments and recommendations on the draft annual plan until March 18, 2015. Written comments should be mailed (to arrive no later than March 18, 2015) to the following address:

Coastal Protection and Restoration Authority
Attn: Chuck Perrodin
P.O. Box 44027
Baton Rouge, LA 70804-4027

If, because of a disability, you require special assistance to participate, please contact the CPRA Administrative Assistant at P.O. Box 44027, Baton Rouge, LA 70804-4027, or by telephone at (225) 342-7308, at least five working days prior to the hearing.

Please visit http://coastal.la.gov/ for more detailed information and a copy of the draft annual plan, which will be posted prior to the public meetings.

For questions regarding the meetings or to record your comments on the draft plan please contact Chuck Perrodin, chuck.perrodin@la.gov, or (225) 342-7615.

Jerome Zeringue
Chairman

1501#073

POTPOURRI

Office of the Governor
Division of Administration
Tax Commission

Public Hearing—Ad Valorem Taxation
Oil and Gas Properties (LAC 61:V.Chapter 9)

The Louisiana Tax Commission published a Notice of Intent and Emergency Rule to promulgate Chapter 9, Oil and Gas Properties, in the December 20, 2014 edition of the *Louisiana Register* (LR 41, pages 2653-2654 and LR 41, pages 2460-2465). The Notice of Intent, as it was published, reflected changes to Chapter 9.

The Tax Commission received written comments and a request for a public hearing on the changes to Chapter 9, Oil and Gas Properties.

A public hearing will be held on Tuesday, February 24, 2015, at 10 a.m., at the Louisiana State Capitol Building, 900 North Third Street, Baton Rouge, LA 70802, to discuss the proposed real and personal property rules and regulations as it pertains to Chapter 9, Oil and Gas Properties.

James D. "Pete" Peters
Chairman

1501#033

POTPOURRI

Office of the Governor
Office of Financial Institutions

Judicial Interest Rate for 2015

Editor's Note: This Potpourri is being republished to correct a printing error. The original Potpourri can be viewed in the December 20, 2014 edition of the *Louisiana Register* on page 2709.

Pursuant to authority granted by R.S. 13:4202(B)(1), as amended, the Louisiana commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2015 will be 4 percent per annum.

John Ducrest, CPA
Commissioner

1501#035

POTPOURRI

Department of Health and Hospitals
Board of Medical Examiners

Public Hearing—Substantive Changes to Proposed Rule Amendments—Physician Practice; Telemedicine
(LAC 46:XLV.7507, 7509, and 7513)

The Louisiana State Board of Medical Examiners (the "board") published a Notice of Intent to amend its rules in the October 20, 2014 edition of the *Louisiana Register* (LR 40:2066-2069). The notice solicited comments. As a result of the board's consideration of the comments received during a subsequent meeting on December 8, 2014, it agreed to revise the original proposed amendments in the following respects: (i) in §7507.C.1, to delete the words *and e-mail address*; (ii) in §7509A.4, to delete the word *immediately* and adding the words "within a reasonable period of time;" (iii) in §7513C.1, after the word *amphetamines*, to add "/stimulants"; (iv) in §7513.C.1.d, after the word *regulations*, to delete reference to the Ryan Haight Online Pharmacy Consumer Protection Act; and (v) to amend the wording of §7513.C.2 so that: after the word *opioid*, add the words "and the requirement for an in-person visit within the past year,"; replace the word *addictive* with "addiction"; after the word *medicine*, add the words "or a physician who is certified by the American Society of Addiction Medicine, or its successors,"; replace the word *using* with "prescribing"; and after the words *in the treatment of*, add the words "his or her patients suffering from". As substantively amended, these provisions will read as set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 75. Telemedicine
Subchapter A. General Provisions
§7507. Prerequisite Conditions; Disclosures

A. - B.2.d. ...

C. Disclosures. Prior to utilizing telemedicine a physician shall insure that the following disclosures have been made to the patient and documented in the medical record. Such disclosures need not be made or documented more than once, except to update the information provided:

1. the name, Louisiana medical license number and contact information (address, telephone number(s)) of the physician;

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7509. Patient Records

A. Patient records shall be:

1. - 3. ...

4. made available to the patient or a physician to whom the patient may be referred within a reasonable period of time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7513. Prohibitions

A. - B.4. ...

C. Exceptions. The following exceptions are recognized to the prohibitions set forth in §7513.B.3 and/or §7513.B.4.

1. Amphetamines. The prohibition against the prescription of an amphetamine and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist who prescribes amphetamines/stimulants in the treatment of his or her patients suffering from attention deficit hyperactivity disorder (ADHD), provided all of the following conditions are satisfied:

a. - c. ...

d. such is permitted by and in conformity with all applicable state and federal laws and regulations.

2. Buprenorphine-Naloxone Preparations. The prohibition against the prescription of an opioid and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist who is board certified in the subspecialty of addiction medicine or a physician who is certified by the American Society of Addiction Medicine, or its successors, from prescribing buprenorphine-naloxone preparations in the treatment of his or her patients suffering from an addictive disorder, provided all of the following conditions are satisfied:

C.2.a. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009), amended LR 41:

No fiscal or economic impact will result from the amendments proposed in this notice.

Public Hearing

In accordance with R.S. 49:968(H)(2), the board gives notice that a public hearing to receive comments and testimony on these substantive amendments to the Rule amendments original1y proposed will be held February 26, 2015, at 10 a.m. in the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Interested persons may submit written comments on these proposed substantive changes to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., February 19, 2015.

Cecilia Mouton, M.D.
Executive Director

1501#030

POTPOURRI

Department of Health and Hospitals
Board of Medical Examiners

Public Hearing—Substantive Changes to Proposed Rule Amendments—Physician Practice; Unprofessional Conduct (LAC 46:XLV.7603)

The Louisiana State Board of Medical Examiners (the "board") published a Notice of Intent to amend its rules in the October 20, 2014 edition of the *Louisiana Register* (LR 40:2069-2070). The notice solicited data, views, arguments, information or comments. As a result of the board's consideration of the comments received during a subsequent meeting on December 8, 2014, it agreed with the request to revise the original proposed amendments: by separating §7603.A.9.b into §7603.A.9.b.i and A.9.b.ii; deleting the word *fellowship* in §7603A.9.b; making technical changes to name of the accrediting entity *the Accreditation Council on Graduate Medical Education*; and adding §7603.A.9.b.ii to include additional certifying entities falling within the scope of the amendment. As substantively amended, these provisions will read as set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 76. Definition of Enforcement Terms
Subchapter B. Unprofessional Conduct
§7603. Unprofessional Conduct

A. - A.8.b. ...

9. Failing to Adhere to Accepted Practices; Misleading Practices—a physician shall:

a. ...

b. not hold himself or herself out as a *specialist* in an area of medical practice unless the physician:

i. has successfully completed a residency training program, which is accredited by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association (AOA), or the Royal College of Physicians and Surgeons of Canada; or

ii. is certified in the specialty by a member board of the American Board of Medical Specialties, the AOA or such other medical specialty certifying entity as the board may approve.

A.10. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011), amended LR 41:

No fiscal or economic impact will result from the amendments proposed in this notice.

Public Hearing

In accordance with R.S. 49:968(H)(2), the board gives notice that a public hearing to receive comments and testimony on these substantive amendments to the Rule amendments originally proposed will be held on February

26, 2015, at 11 a.m. in the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Interested persons may submit written comments on these proposed substantive changes to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., February 19, 2015.

Cecilia Mouton, M.D.
Executive Director

1501#029

POTPOURRI

Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Kelton L. Howard	Monroe	M	Emma Antley et al Unit 3	001	57533
Kelton L. Howard	Monroe	M	E. J. H. Howard	001	87492
Kelton L. Howard	Monroe	M	E. J. H. Howard	002	89817

James H. Welsh
Commissioner

1501#013

POTPOURRI

Department of Natural Resources
Office of Conservation
Environmental Division

Legal Notice—Docket No. ENV 2015-01

Notice is hereby given that the commissioner of conservation will conduct a hearing at 6 p.m., Thursday, February 26, 2015, at the Belle River Volunteer Fire Department located at 1207-A Hwy 70, Belle River, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of F.A.S. Environmental Services, LLC, P.O. Box 760, Pierre Part, LA 70339. The applicant requests approval from the Office of Conservation to construct and operate a commercial transfer station for temporary storage of exploration and production waste (E and P waste) fluids located in Township 13 South, Range 12 East, Section 22 in St. Martin Parish.

The application is available for inspection by contacting Mr. Daryl Williams, Office of Conservation, Environmental Division, eighth floor of the LaSalle office building, 617 North Third Street, Baton Rouge, LA. Copies of the application will be available for review at the St. Martin Parish Council in St. Martinville and the public library in Pierre Part, Louisiana no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Williams at (225) 342-7286.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, March 5, 2015, at the Baton Rouge office. Comments should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, LA 70804
Re: Docket No. ENV 2015-01
FAS Transfer Station Application
St. Martin Parish

James H. Welsh
Commissioner

1501#024

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