HEALTH SERVICES. Provides relative to facility need review. (8/1/22)

AN ACT

To amend and reenact R.S. 40:2116 and to enact R.S. 40:2009.4(C), 2116.1, 2116.2, and 2180.2(12), relative to facility need review; to provide legislative authority for facility need review; to provide for healthcare provider types subject to facility need review; to provide for the facility need review committee; to provide for a nursing facility moratorium; to provide for exceptions; to provide for cost effective measures; to provide for notice of sex offenders living in certain facilities; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:2116 is hereby amended and reenacted and R.S. 40:2009.4(C), 2116.1, 2116.2, and 2180.2(12) are hereby enacted to read as follows:

§2009.4. Standards prescribed

C. The Louisiana Department of Health shall develop and implement policies and procedures to require nursing facilities to notify new residents and their families and guardians of sex offenders living in their facilities upon admission. The notification shall continue for as long as the information is

Coding: Words which are struck through are deletions from existing law; words in boldface type and underscored are additions.
considered a public record. During the annual licensing process, health standards surveyors shall verify the providers compliance with the policy.

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PART II-A. FACILITY NEED REVIEW

AND NURSING FACILITY MORATORIUM

§2116. Facility need review

A. The Louisiana Department of Health, in accordance with the Administrative Procedure Act, shall establish a facility need review process consistent with the regulations for licensure and for Title XIX of the Social Security Act in accordance with the provisions of this Section. No healthcare provider shall be subject to facility need review unless authorized by the legislature in Subsection B of this Section.

B. The following healthcare providers shall be subject to facility need review to determine the need for a new or additional facility, provider, program, service, or bed:

(1) Home- and community-based service providers. However, certain services or modules of a home- and community-based service provider may be excluded from the facility need review process at the discretion of the secretary of the Louisiana Department of Health.

(2) Adult day healthcare providers.

(3) Hospice providers or inpatient hospice facilities.

(4) Pediatric day healthcare facilities.

(5) Behavioral health services providers that provide psychosocial rehabilitation or community psychiatric support and treatment services.

(6) Opioid treatment programs licensed under a behavioral health services provider license.

(7) Intermediate care facilities for persons with developmental disabilities.

(8) Adult residential care providers.
C.(1) The secretary of the Louisiana Department of Health shall appoint a facility need review committee, "FNR committee", that shall consist of the following members:

(a) The secretary of the Louisiana Department of Health or his designee.
(b) The assistant secretary of the office of behavioral health of the Louisiana Department of Health or his designee.
(c) The assistant secretary of the office for citizens with developmental disabilities of the Louisiana Department of Health or his designee.
(d) The assistant secretary of the office of aging and adult services of the Louisiana Department of Health or his designee.
(e) The assistant secretary of the office of public health of the Louisiana Department of Health or his designee.
(f) The Medicaid director of the Louisiana Department of Health or his designee.
(g) The Medicaid medical director of the Louisiana Department of Health or his designee.

(2) In addition to the members set forth in Paragraph (1) of this Subsection, the secretary may appoint additional members to the FNR committee when necessary in reviewing applications of opioid treatment programs.

(3) No FNR committee member shall have a proprietary or financial interest in any facility subject to facility need review.

(4) The FNR committee shall issue a decision on a facility need review application within ninety days from receipt of application or within the deadlines established in a request for proposal or request for application.

(5) An applicant for facility need review shall provide all written application materials and documentation as may be required by rule. The applicant may include any additional written documentation or written evidence that supports the application for facility need review.
(a) Unless otherwise stated in a specific request for proposal or request for applications, the initial review and decision by the FNR committee shall consider all written materials and documentation submitted by the applicant and shall be conducted as a paper review.

(b) Unless otherwise stated in a specific request for proposal or request for applications, if the initial decision is to reject or deny the facility need review application, then the applicant may request to supplement the application and may request an in-person presentation before the FNR committee as part of its supplemental application review.

(c) If the facility need review application is rejected or denied after the supplemental application review, the applicant may request an administrative appeal of the FNR committee’s decision with the Division of Administrative Law in accordance with the Administrative Procedure Act. The applicant is not required to request a supplemental review and can elect to proceed directly to an administrative appeal.

(6) If the FNR committee approves the facility need review application, then the applicant may proceed with seeking licensure.

B: D. The department shall promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Section. The rules and regulations shall include but not be limited to the following:

(1) Criteria for review of beds for Level 4 adult residential care providers as defined in R.S. 40:2166.3 and identified in R.S. 40:2166.5, and community and group home beds for persons with developmental disabilities, to determine if there is a need for additional beds to enroll and participate in the Title XIX program healthcare provider applications for facility need review, including provisions for review pursuant to requests for proposals or requests for applications.

(2) Criteria for review of nursing facility beds to determine if there is a need for a new or additional beds facility, provider, program, service, or bed.
(3) Specific duties of the department and the FNR committee relative to
review proposals for new facilities and determine the need therefor of applications.
(4) Appropriate methodology for the collection of data necessary for the
administration of the program.
(5) Procedures for the FNR committee to grant and revoke approvals
approve, reject, or deny applications.
(6) Establishment of application fees.
(7) Procedures for a supplemental review of applications by the department
FNR committee.
(8) Procedures to request a fair hearing from a determination made by the
department FNR committee.
(9) Provisions for judicial review from the decision rendered after a fair
hearing an administrative appeal.
(10) Criteria for review of beds issued pursuant to a department waiver to
determine if there is a need for such beds to be licensed and enrolled in the Title XIX
program. Provided, however, that providers of services may be enrolled and
participate in such a Title XIX program only if and when the department develops
a cost-effective plan for medical residential care services that is cost neutral with
respect to existing Medicaid long-term care services and expenditures, or the
legislature specifically provides funding for such services. Establishment of
services and modules of a home- and community-based service provider that
will be subject to the facility need review process.
E. No new facility, service, or beds healthcare provider as described
provided for in Paragraphs (B)(1) and (2) Subsection B of this Section shall be
certified to participate in the Title XIX program without the approval of the
department based upon a determination of a need therefor in accordance with the
provisions of this Part first obtaining facility need review approval and
complying with any and all licensing regulations promulgated by the
department. Any person establishing, managing, or operating a new facility,
service, or bed without the approval required by this Part Section shall be prohibited from participating in the Title XIX program.

D.(1) In order to accomplish cost effectiveness of beds issued pursuant to a department waiver, the department may promulgate rules that include but are not limited to the following:

(a) A bed abeyance program to reduce nursing facility beds by ten percent or more. Such an abeyance program shall include a time frame in which a determination is made as to whether beds should be brought out of abeyance based upon a ninety-three percent occupancy rate within a service area.

(b) An increase in the minimum occupancy level required for a nursing facility to fully recover its capital cost.

(c) In order to achieve a reduction in long-term care institutional costs, a program for reduction of certificates of need for nursing facility beds, which may include a buy-back program, provided such a buy-back program is approved by the Centers for Medicare and Medicaid Services and is eligible for federal funds participation.

(d) A bed exchange program that allows a nursing facility to create adult residential care beds based on the permanent elimination of existing nursing facility beds.

(2) The Louisiana Department of Health shall implement a moratorium on additional beds for nursing facilities. The Louisiana Department of Health shall not approve any additional nursing facilities or additional beds in nursing facilities through facility need review. This prohibition shall apply only to applications for new beds not approved prior to July 1, 1996. The prohibition shall become enforceable on July 1, 1996, and shall remain in effect until July 1, 2027. This prohibition shall not apply to the replacement of existing facilities, provided that there is no increase in existing nursing home beds at the replacement facility.

(3) Repealed by Acts 2008, No. 187, §2, eff. June 13, 2008:

(4) Notwithstanding any other provision of law to the contrary, any nursing
facility in Lafourche Parish located in an area designated a flood zone that has
commenced construction on a replacement facility during the period of the
moratorium on replacement facilities shall be eligible to apply for licensure after
June 30, 2008, provided the replacement facility is in an area outside a flood zone
in such parish and south of the Company Canal. The buildings and grounds
constituting the original nursing facility to be vacated may be offered by donation
to the state, political subdivision, or other public entity for uses consistent with
public purposes.

(5) The moratorium on additional beds for nursing facilities imposed pursuant
to Paragraph (2) of this Subsection shall not apply to a nursing facility that seeks to
license additional beds if the following criteria are met:

(a) The nursing facility is a non-profit corporation formed pursuant to
Louisiana law:

(b) The total number of additional beds shall not exceed ten;

(c) The additional beds shall be occupied only by persons who meet one of
the following criteria:

(i) Prior to admission to the nursing facility, the person resided in an adult
residential care facility, as defined in R.S. 40:2153, owned by the same legal entity
which owns the nursing facility:

(ii) Prior to admission to the nursing facility, the person resided in a living
unit of a provider of continuing care, as defined in R.S. 51:2173, owned by the same
legal entity which owns the nursing facility:

(iii) The person was previously a resident of the same nursing facility:

(d) The additional beds shall not be enrolled and participate in the Title XIX
program:

(e) Tentative approval of the plans and specifications for additional beds was
received by the division of engineering and architectural services of the Louisiana
Department of Health prior to August 15, 2006:

(f) Construction of the additional beds commenced prior to August 15, 2006:
(g) Construction was completed on or before April 1, 2007:

(h)(a) Notwithstanding any other provision of law to the contrary, the department may license, but not certify for Medicaid participation, up to thirty additional beds for a continuing care retirement community, registered in accordance with R.S. 51:2171 et seq., and found to be in compliance with said statutes on May 3, 2002 by the Louisiana Department of Health during the existence of the moratorium imposed pursuant to Paragraph (2) of this Subsection:

(b) At the discretion of the continuing care retirement community provider, the licensed beds may be used for persons who are not residents of the continuing care retirement community and who are not parties to a continuing care contract for a period of up to five years after the receipt of the certification of occupancy for a registered continuing care retirement community. After that period, the licensed beds may be used only by owners of a continuing care contract with the continuing care retirement community provider.


E.(1) Except as provided in Paragraphs (2), (3), and (4) of this Subsection, the Louisiana Department of Health shall suspend approval, certification, and enrollment of nursing facility beds which were previously approved to participate in the Title XIX program under a facility need review process, Section 1122 process, or any predecessor needs review process, unless such beds are certified and enrolled in the Title XIX program by December 31, 1997. Such suspension shall be for the length of the moratorium imposed pursuant to Subsection D of this Section:

(2) The suspension shall not apply to existing approvals for replacement of existing nursing facilities, or approvals which are under judicial review, on August 15, 1997. The suspension shall not apply to approvals for alternate use of previously approved beds:

(3) In the case of previously approved but unbuilt nursing facilities or beds, the department shall not suspend approval, certification, and enrollment if
construction has actually begun by June 30, 1998, and construction is completed and
such facilities or beds are actually certified and enrolled in the Title XIX program
by December 31, 1999. In said cases, the department shall suspend approval,
certification, and enrollment of previously approved beds not certified and enrolled
by December 31, 1999.

(4) In the case of previously approved but unbuilt nursing facilities or beds,
if construction has actually begun by June 30, 1998, and construction is not
completed and the facilities or beds are not actually certified and enrolled in the Title
XIX program by December 31, 1999, the secretary of the Louisiana Department of
Health may authorize the certification and enrollment of the beds by December 31,
2001. However, the extension shall not be granted unless the secretary determines
that construction has not been completed due to circumstances beyond the control
of the applicant, a written request for an extension was made prior to December 31,
1999, and financing has been approved for the beds. These provisions shall only be
applicable in the case of a facility, the primary purpose of which is to replace an
existing facility, but also in so doing, enrolling additional beds.

F.(1) Except as provided in Paragraph (2) of this Subsection, the Louisiana
Department of Health shall revoke all approvals for community and group home
beds which were previously approved to participate in the Title XIX program under
a facility need review process, Section 1122 process, or any predecessor needs
review process, unless such beds are certified and enrolled in the Title XIX program
by December 31, 1997.

(2) In the case of unbuilt community and group home facilities, the
department shall not revoke approvals if construction has actually begun by
December 31, 1997, and construction is completed and such facilities or beds are
actually certified and enrolled in the Title XIX program by June 30, 1999. In said
cases, the department shall revoke all approved beds not certified and enrolled by
June 30, 1999.

G. Any intermediate care facility for people with developmental disabilities.
which serves children or adults with intellectual disabilities, autism, or behavioral
problems, with no less than one hundred fifty and no more than one hundred eighty
beds, shall be eligible for the facility need review process as set forth in this Section
and in rules and regulations promulgated by the Louisiana Department of Health as
authorized in Subsections A and B of this Section. The exemption shall exist for a
maximum of fifty additional beds.

H. In the case of nursing facility beds currently approved, any nursing facility
provider may replace any existing beds with adult residential care home beds, either
through new construction or through renovation and conversion. Such replacement
shall be subject to licensing regulations, but not to additional facility need review
process approval, subject to budget neutrality provisions and rules and regulations
promulgated by the Louisiana Department of Health:

I. The Louisiana Department of Health shall develop and implement policies
and procedures to require nursing facilities and ICF/DD providers to notify new
residents and their families and guardians of sex offenders living in their facilities
upon admission. The notification shall continue for as long as the information is
considered a public record. During the annual licensing process, health standards
surveyors shall verify providers' compliance with the policy.

J.(1) Notwithstanding any other provision of law to the contrary, the facility
need review approval for licensed intermediate care facilities for people with
developmental disabilities (ICF/DD) located in an area or areas which have been
affected by an executive order or proclamation of emergency or disaster and which
were operating at the time the executive order or proclamation was issued under R.S.
29:724 shall remain in effect and shall not be terminated, considered to have expired,
or revoked until January 1, 2012. For this exception to apply, the emergency or
disaster shall be the sole causal factor in the interruption of the provision of services.
This exception shall not apply if any one of the following occurs:

(a) The approval is voluntarily surrendered by the provider;

(b) The provider fails to notify in writing the health standards section of the

Louisiana Department of Health of its intention to avail itself of the continuation of facility need review approval no later than December 31, 2005.

(c) The provider fails to recommence providing services prior to January 1, 2012.

(2) Nothing in this Subsection shall be construed to accomplish either of the following:

(a) To permit a nursing home which has relocated, as the result of an executive order or declaration of emergency or disaster issued in accordance with R.S. 29:724, to relocate such facility outside of the geographic area for which the original facility need review approval was granted:

(b) To permit a nursing home which has relocated, as the result of an executive order or declaration of emergency or disaster issued in accordance with R.S. 29:724, to obviate the provisions of R.S. 40:2116(D)(2).

(3)(a) Notwithstanding any other law to the contrary, any nursing home provider located in a parish with a population between sixty-five thousand and seventy thousand according to the latest federal decennial census, which parish was affected by hurricane Katrina or Rita, and who ceased operations solely because of the damage occasioned by the events which were the subject of an order or proclamation of emergency or disaster issued pursuant to R.S. 29:724, and whose operations have not been resumed as of July 1, 2008, shall have their pre-storm facility need review approval reinstated for the sole purpose of rebuilding or replacing the facility, upon meeting the following conditions:

(i) The nursing home provider shall submit a reinstatement request to the health standards section of the Louisiana Department of Health in writing by December 31, 2008.

(ii) The reinstatement request shall state the provider’s intent to rebuild the nursing home and resume providing nursing home services in that parish.

(iii) The nursing home provider shall resume operation as a nursing home provider in that parish no later than January 1, 2010.
(iv) The nursing home provider shall submit all fees, costs, and cost reports
due and owing to the Louisiana Department of Health:

(b) The facility need review approval reinstated to the facility shall
encompass all rights and responsibilities afforded the facility at the time it ceased
providing services as a result of hurricanes Katrina and Rita:

(c) The provisions of this Subsection shall not apply to a nursing home
provider who has voluntarily surrendered its facility need review approval.

K. The department shall adopt a rule to allow a nursing home located in a
service area which has less than ninety-three percent occupancy to temporarily
convert a number of licensed beds to an alternate use. The beds may be converted for
alternate health care use until such time as the average annual occupancy in the
service area exceeds ninety-three percent and an adjoining service area exceeds
ninety-three percent based on the department’s LTC-2 Report and the facility is
notified of the same. The facility shall then either re-license the beds as nursing
home beds within one year of receipt of the notice from the department, or the beds
will be deemed expired. Nothing herein shall be construed to preclude nursing homes
from taking beds out of alternate use at any time and using them as licensed beds
unless deemed expired. The prohibition contained in Paragraph (D)(2) of this Section
shall not apply to nursing home beds in alternate use.

§2116.1. Nursing facility moratorium; exceptions

A. There shall be a moratorium on nursing facilities and additional beds
for nursing facilities.

B. The moratorium provided for in Subsection A of this Section shall not
apply to the following:

(1) Replacement of existing facilities, provided that there is no increase
in existing nursing home beds at the replacement facility. However, a nursing
home which has relocated, as the result of an executive order or declaration of
emergency or disaster issued in accordance with R.S. 29:724 shall not be
allowed to permanently relocate such facility outside of the geographic area for
which the original facility was licensed.

(2) Replacement of nursing facility beds with adult residential care home beds, either through new construction or through renovation and conversion. Such replacement shall be subject to licensing rules and regulations and budget neutrality provisions promulgated by the Louisiana Department of Health.

(3) Any nursing facility in Lafourche Parish located in an area designated a flood zone that has commenced construction on a replacement facility, provided the replacement facility is in an area outside a flood zone in the parish and south of the Company Canal. The buildings and grounds constituting the original nursing facility to be vacated may be offered by donation to the state, political subdivision, or other public entity for uses consistent with public purposes.

(4) A nursing facility that seeks to license additional beds if the following criteria are met:

(a) The nursing facility is a nonprofit corporation formed pursuant to Louisiana law.

(b) The total number of additional beds shall not exceed ten.

(c) The additional beds shall be occupied only by persons who meet one of the following criteria:

(i) Prior to admission to the nursing facility, the person resided in an adult residential care facility, as defined in R.S. 40:2153, owned by the same legal entity which owns the nursing facility.

(ii) Prior to admission to the nursing facility, the person resided in a living unit of a provider of continuing care, as defined in R.S. 51:2173, owned by the same legal entity which owns the nursing facility.

(iii) The person was previously a resident of the same nursing facility.

(d) The additional beds shall not be enrolled and participate in the Title XIX program.

(e) Construction of the nursing facility was completed on or before April
(5) A nursing facility located in a service area which has less than ninety-three percent occupancy that temporarily converts a number of licensed beds to an alternate use. The beds may be converted for alternate health care use until such time as the average annual occupancy in the service area exceeds ninety-three percent and an adjoining service area exceeds ninety-three percent based on the department’s LTC-2 Report and the facility is notified of the same. The facility shall then either relicense the beds as nursing home beds within one year of receipt of the notice from the department, or the beds will be deemed expired. Nothing in this Paragraph shall be construed to preclude nursing facilities from taking beds out of alternate use at any time and using them as licensed beds unless they are deemed expired.

(6) Nursing home beds in alternate use.

C. The moratorium provided for in this Section shall be in effect until July 1, 2027.

§2116.2. Nursing facilities; cost effective measures

A. The Louisiana Department of Health may promulgate rules to accomplish cost effectiveness of beds issued pursuant to a department waiver that include but are not limited to the following:

(1) A bed abeyance program to reduce nursing facility beds by ten percent or more. Such an abeyance program shall include a timeframe in which a determination is made as to whether beds should be brought out of abeyance based upon a ninety-three percent occupancy rate within a service area.

(2) An increase in the minimum occupancy level required for a nursing facility to fully recover its capital cost.

(3) A buy-back program, provided such a buy-back program is approved by the Centers for Medicare and Medicaid Services and is eligible for federal funds participation.

(4) A bed exchange program that allows a nursing facility to create adult
residential care beds based on the permanent elimination of existing nursing
facility beds.

§2180.2. Promulgation of rules

The department shall promulgate, in accordance with the Administrative
Procedure Act, licensing standards, rules, and regulations, regarding, but not limited
to the following:

(12) The Louisiana Department of Health shall develop and implement
policies and procedures to require ICF/DD providers to notify new residents
and their families and guardians of sex offenders living in their facilities upon
admission. The notification shall continue for as long as the information is
considered a public record. During the annual licensing process, health
standards surveyors shall verify the providers' compliance with the policy.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Brandi Cannon.

DIGEST
SB 30 Original 2022 Regular Session Fred Mills

Present law establishes a facility need review process within the Louisiana Department of
Health (LDH) to determine if there is a need for any new or additional facilities, providers,
programs, services, or beds. Proposed law identifies the healthcare providers that are subject
to facility need review and provides for the creation and composition of a facility need
review committee, the review process used by the committee, and the rights of the applicant
subject to review. Proposed law provides that facility need review must be satisfied before
a provider can proceed with licensure and Medicaid provider certification.

Present law provides for a nursing facility moratorium and certain exceptions. Proposed law
moves provisions in present law relative to the moratorium and exceptions into a new section
and deletes obsolete provisions.

Present law provides that the nursing facility moratorium shall be in effect until July 1, 2027.
Proposed law retains present law.

Present law provides for certain cost effective measures that may be accomplished by a
department waiver. Proposed law moves provisions in present law relative to cost effective
measures into a new section.

Effective August 1, 2022.

(Amends R.S. 40:2116; adds R.S. 40:2009.4(C), 2116.1, 2116.2, and 2180.2(12))