

2022 Regular Session

SENATE BILL NO. 30

BY SENATOR FRED MILLS

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

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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

1 considered a public record. During the annual licensing process, health
2 standards surveyors shall verify the providers compliance with the policy.

3 * * *

4 PART II-A. FACILITY NEED REVIEW

5 AND NURSING FACILITY MORATORIUM

6 §2116. Facility need review

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

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

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

20 (2) Adult day healthcare providers.

21 (3) Hospice providers or inpatient hospice facilities.

22 (4) Pediatric day healthcare facilities.

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

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

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

29 (8) Adult residential care providers.

1 C.(1) The secretary of the Louisiana Department of Health shall appoint
2 a facility need review committee, "FNR committee", that shall consist of the
3 following members:

4 (a) The secretary of the Louisiana Department of Health or his designee.

5 (b) The assistant secretary of the office of behavioral health of the
6 Louisiana Department of Health or his designee.

7 (c) The assistant secretary of the office for citizens with developmental
8 disabilities of the Louisiana Department of Health or his designee.

9 (d) The assistant secretary of the office of aging and adult services of the
10 Louisiana Department of Health or his designee.

11 (e) The assistant secretary of the office of public health of the Louisiana
12 Department of Health or his designee.

13 (f) The Medicaid director of the Louisiana Department of Health or his
14 designee.

15 (g) The Medicaid medical director of the Louisiana Department of
16 Health or his designee.

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

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

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

26 (5) An applicant for facility need review shall provide all written
27 application materials and documentation as may be required by rule. The
28 applicant may include any additional written documentation or written
29 evidence that supports the application for facility need review.

1 **(a) Unless otherwise stated in a specific request for proposal or request**
2 **for applications, the initial review and decision by the FNR committee shall**
3 **consider all written materials and documentation submitted by the applicant**
4 **and shall be conducted as a paper review.**

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

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

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

18 B: ~~D.~~ The department shall promulgate rules and regulations in accordance
19 with the Administrative Procedure Act to ~~provide for facility need review~~
20 **implement the provisions of this Section.** The rules and regulations shall include
21 but not be limited to the following:

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

28 (2) Criteria for review of ~~nursing facility beds~~ to determine if there is a need
29 for **a new or additional beds facility, provider, program, service, or bed.**

1 (3) Specific duties of the department and the FNR committee relative to
2 review ~~proposals for new facilities and determine the need therefor~~ of applications.

3 (4) Appropriate methodology for the collection of data necessary for the
4 administration of the program.

5 (5) Procedures for the FNR committee to ~~grant and revoke approvals~~
6 approve, reject, or deny applications.

7 (6) Establishment of application fees.

8 (7) Procedures for a supplemental review of applications by the ~~department~~
9 FNR committee.

10 (8) Procedures to request a fair hearing from a determination made by the
11 ~~department~~ FNR committee.

12 (9) Provisions for judicial review from the decision rendered after ~~a fair~~
13 hearing an administrative appeal.

14 (10) ~~Criteria for review of beds issued pursuant to a department waiver to~~
15 ~~determine if there is a need for such beds to be licensed and enrolled in the Title XIX~~
16 ~~program. Provided, however, that providers of services may be enrolled and~~
17 ~~participate in such a Title XIX program only if and when the department develops~~
18 ~~a cost-effective plan for medical residential care services that is cost neutral with~~
19 ~~respect to existing Medicaid long-term care services and expenditures, or the~~
20 ~~legislature specifically provides funding for such services.~~ Establishment of
21 services and modules of a home- and community-based service provider that
22 will be subject to the facility need review process.

23 C. E. ~~No new facility, service, or beds~~ healthcare provider as described
24 provided for in Paragraphs (B)(1) and (2) Subsection B of this Section shall be
25 certified to participate in the Title XIX program without ~~the approval of the~~
26 ~~department based upon a determination of a need therefor in accordance with the~~
27 ~~provisions of this Part~~ first obtaining facility need review approval and
28 complying with any and all licensing regulations promulgated by the
29 department. Any person establishing, managing, or operating a new facility,

1 service, or bed without the approval required by this ~~Part~~ **Section** shall be prohibited
2 from participating in the Title XIX program.

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

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

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

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

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

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

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

29 (4) ~~Notwithstanding any other provision of law to the contrary, any nursing~~

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

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

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

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

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

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

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

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

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

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

29 (f) Construction of the additional beds commenced prior to August 15, 2006.

1 ~~(g) Construction was completed on or before April 1, 2007.~~

2 ~~(6)(a) Notwithstanding any other provision of law to the contrary, the~~
3 ~~department may license, but not certify for Medicaid participation, up to thirty~~
4 ~~additional beds for a continuing care retirement community, registered in accordance~~
5 ~~with R.S. 51:2171 et seq., and found to be in compliance with said statutes on May~~
6 ~~3, 2002 by the Louisiana Department of Health during the existence of the~~
7 ~~moratorium imposed pursuant to Paragraph (2) of this Subsection.~~

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

15 ~~(7) Repealed by Acts 2011, No. 179, §1, eff. August 15, 2011.~~

16 ~~(8) Repealed by Acts 2011, No. 179, §1, eff. August 15, 2011.~~

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

24 ~~(2) The suspension shall not apply to existing approvals for replacement of~~
25 ~~existing nursing facilities, or approvals which are under judicial review, on August~~
26 ~~15, 1997. The suspension shall not apply to approvals for alternate use of previously~~
27 ~~approved beds.~~

28 ~~(3) In the case of previously approved but unbuilt nursing facilities or beds,~~
29 ~~the department shall not suspend approval, certification, and enrollment if~~

1 construction has actually begun by June 30, 1998, and construction is completed and
2 such facilities or beds are actually certified and enrolled in the Title XIX program
3 by December 31, 1999. In said cases, the department shall suspend approval,
4 certification, and enrollment of previously approved beds not certified and enrolled
5 by December 31, 1999.

6 (4) In the case of previously approved but unbuilt nursing facilities or beds,
7 if construction has actually begun by June 30, 1998, and construction is not
8 completed and the facilities or beds are not actually certified and enrolled in the Title
9 XIX program by December 31, 1999, the secretary of the Louisiana Department of
10 Health may authorize the certification and enrollment of the beds by December 31,
11 2001. However, the extension shall not be granted unless the secretary determines
12 that construction has not been completed due to circumstances beyond the control
13 of the applicant, a written request for an extension was made prior to December 31,
14 1999, and financing has been approved for the beds. These provisions shall only be
15 applicable in the case of a facility, the primary purpose of which is to replace an
16 existing facility, but also in so doing, enrolling additional beds.

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

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

29 G. Any intermediate care facility for people with developmental disabilities,

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

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

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

19 J.(1) ~~Notwithstanding any other provision of law to the contrary, the facility~~
20 ~~need review approval for licensed intermediate care facilities for people with~~
21 ~~developmental disabilities (ICF/DD) located in an area or areas which have been~~
22 ~~affected by an executive order or proclamation of emergency or disaster and which~~
23 ~~were operating at the time the executive order or proclamation was issued under R.S.~~
24 ~~29:724 shall remain in effect and shall not be terminated, considered to have expired,~~
25 ~~or revoked until January 1, 2012. For this exception to apply, the emergency or~~
26 ~~disaster shall be the sole causal factor in the interruption of the provision of services.~~
27 ~~This exception shall not apply if any one of the following occurs:~~

28 (a) ~~The approval is voluntarily surrendered by the provider.~~

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

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

3 (c) ~~The provider fails to recommence providing services prior to January 1,~~
4 ~~2012.~~

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

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

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

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

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

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

28 (iii) ~~The nursing home provider shall resume operation as a nursing home~~
29 ~~provider in that parish no later than January 1, 2010.~~

1 ~~(iv) The nursing home provider shall submit all fees, costs, and cost reports~~
2 ~~due and owing to the Louisiana Department of Health.~~

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

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

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

20 **§2116.1. Nursing facility moratorium; exceptions**

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

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

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

1 which the original facility was licensed.

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

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

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

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

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

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

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

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

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

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

29 (e) Construction of the nursing facility was completed on or before April

1 **1, 2007.**

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

13 **(6) Nursing home beds in alternate use.**

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

16 **§2116.2. Nursing facilities; cost effective measures**

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

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

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

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

29 **(4) A bed exchange program that allows a nursing facility to create adult**

