

## **Chapter 125. Facility Need Review**

### **Subchapter A. General Provisions**

#### **§12501. Definitions**

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

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

*Adult Day Health Care (ADHC)*—provides services five or more hours a day (not to exceed five days per week) for medical, nursing, social, care management, and personal care needs to adults who are functionally impaired.

*Adult Day Health Care Provider*—any place owned or operated for profit or nonprofit by a person, society, agency, corporation, institution, or any other group, wherein two or more functionally impaired adults who are not related to the owner or operator of such agency are provided with adult day health care services.

*Adult Residential Care Provider (ARCP)*—a facility, agency, institution, society, corporation, partnership, company entity, residence, person or persons, or any other group which provides adult residential care services for compensation for two or more adults who are unrelated to

the licensee or operator. Adult residential care includes, but is not limited to the following services: lodging, meals, medication administration, intermittent nursing service, and assistance with personal hygiene, assistance with transfers and ambulation, assistance with dressing, housekeeping and laundry.

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

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

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

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

*CMS*—Centers for Medicare and Medicaid Services.

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

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

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

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

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

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

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

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

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

*Home and Community Based Service (HCBS) Providers*—those agencies, institutions, societies, corporations, facilities, person or persons, or any other group intending to provide or providing respite care services, personal care attendant (PCA) services, or supervised independent living (SIL) services, or any combination of services thereof, including respite providers, SIL providers, and PCA providers.

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

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

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

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

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

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

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

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

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

- a. skilled nursing care and related services for residents who require medical or nursing care;
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
- c. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities; said institutional facilities are those facilities which are not primarily for the care of mental diseases.

*Outpatient Abortion Facility*—any outpatient facility licensed by the Department of Health and Hospitals pursuant to R.S. 40:2175.1 et seq., or its successor licensing statute.

*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.

*Person*—an individual or other legal entity.

*Program*—the Facility Need Review Program.

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

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

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

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

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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), amended LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:135 (January 2015).

and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access adult day health care if the ADHC 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 ADHC providers in the same geographic location and parish 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 ADHC providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed ADHC providers are non-transferrable and are limited to the location and the name of the original licensee.

1. An ADHC provider undergoing a change of location in the same parish in which it is licensed 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. An ADHC provider undergoing a change of location outside of the parish in which it is licensed shall submit a new FNR application and fee and undergo the FNR approval process.

2. An ADHC 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 shall show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR approval of a licensed ADHC provider shall automatically expire if the ADHC provider moves or relocates, if the ADHC provider sells, transfers, or conveys ownership of the ADHC provider to another party or entity, or if the ADHC provider sells, transfers or conveys the FNR approval to another party, entity, or location, unless the ADHC provider has submitted application to and received approval from 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 36:323 (February 2010).

### **§12525. Adult Day Health Care Providers**

A. No ADHC provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of an ADHC provider license. Once the FNR Program approval is granted, an ADHC provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. The service area for proposed or existing ADHC providers is the parish in which the ADHC provider is or 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 ADHC provider in the geographic location for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application,