

First Extraordinary Session, 2005

SENATE BILL NO. 107

BY SENATOR MCPHERSON

HEALTH/HOSPITALS DEPT. Provides relative to licensure of health care providers, provider agreements, and the provisions of the facility need review process.

1 AN ACT
2 To amend and reenact R.S. 40:2109(B)(7) and to enact R.S. 40:2007.1 and 2116(J), and R.S.
3 46:437.11(F), relative to the licensure of healthcare providers; to provide relative to
4 health care services in areas affected by declarations of emergency or disaster; to
5 provide relative to the interruption of health care services; to provide relative to
6 replacement and repair of health care facilities in certain areas; to provide relative
7 to facility need review approvals for certain health care providers; to provide for
8 licensure and facility need review; to provide relative to the termination of provider
9 agreements; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:2109(B)(7) is hereby amended and reenacted and R.S. 40:2007.1
12 and 2116(J) are hereby enacted to read as follows:

13 **§2007.1. Interruption of provision of health care services; executive order or**
14 **proclamation of emergency or disaster; licensing**
15 **A.(1) The provisions of this Section shall apply to any person,**
16 **partnership, corporation, unincorporated association, or other legal entity who,**
17 **at the time of an executive order or proclamation of emergency or disaster**

1 issued in accordance with R.S. 29:724, is operating a licensed health care
2 facility, as listed below, in an area or areas which have been affected by such
3 executive order or proclamation. This Section shall apply to any licensed:

4 (a) Adult day health care facility.

5 (b) Substance abuse/addiction treatment facility.

6 (c) Ambulatory surgery center.

7 (d) Case management provider.

8 (e) Urine drug screening provider.

9 (f) Home health agency.

10 (g) Hospice.

11 (h) Hospital.

12 (i) Nursing home.

13 (j) Rural health clinic.

14 (k) Intermediate care facility for the mentally retarded (ICF/MR).

15 (l) End stage renal disease facility.

16 (2) All licensed health care providers operating in an area or areas which
17 have been affected by an executive order or proclamation of emergency or
18 disaster who seek the protection of the provisions of this Section, shall meet the
19 following criteria:

20 (a) The health care provider shall notify in writing the health standards
21 section of the Department of Health and Hospitals that the provider has
22 experienced an interruption in the provision of services as a result of events that
23 are the subject of such executive order or proclamation of emergency or
24 disaster issued in accordance with R.S. 29:724. Such notice shall be received no
25 later than December 31, 2005.

26 (b) The health care provider shall notify in writing the health standards
27 section of the Department of Health and Hospitals that the provider intends to
28 resume operating a health care facility.

29 (c) The provider shall resume operating as a health care facility no later

1 than January 1, 2008. Extensions may be granted by the Department of Health
2 and Hospitals for good cause, including, but not limited to delays in
3 construction beyond the provider's control.

4 B.(1) No licensed health care facility that experiences an interruption in
5 the provision of services as a result of events that are the subject of an executive
6 order or proclamation of emergency or disaster shall be deemed by the
7 Department of Health and Hospitals to have voluntarily surrendered its license
8 solely as a result of such interruption of services.

9 (2) The interruption of the provision of health care services by a licensed
10 health care facility as a result of events that are the subject of an executive
11 order or proclamation of emergency or disaster shall not constitute the sole
12 cause for the Department of Health and Hospitals to terminate or revoke such
13 license.

14 C. Nothing in this Section shall prohibit the Department of Health and
15 Hospitals from inspecting a health care facility prior to the re-establishment of
16 the provision of health care services whether at a temporary or permanent
17 location.

18 D.(1) The Department of Health and Hospitals shall license, as of the
19 date services commence, any outpatient off-campus facility of a licensed
20 hospital, if the need for the off-campus facility was occasioned by an event
21 which is the subject of an executive order or proclamation of emergency or
22 disaster, issued in accordance with R.S. 29:724. In order to qualify for licensure
23 of such an off-campus facility, the licensed hospital shall, no later than
24 December 31, 2005, comply with the following:

25 (a) Notify the Department of Health and Hospitals that it has
26 commenced operations at an outpatient off-campus facility, regardless of
27 whether such off-campus facility is located in an area that is the subject of the
28 executive order or proclamation of emergency or disaster issued in accordance
29 with R.S. 29:724.

* * *

J.(1) Notwithstanding any other provision of law to the contrary, the facility need review approval for licensed nursing homes or intermediate care facilities for the mentally retarded (ICF/MR) 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, 2008. 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 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 Department of Health and Hospitals 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, 2008.

(2) Nothing in this Subsection shall be construed to permit a nursing home or ICF/MR to relocate its facility outside the geographic area for which the original facility need review approval was granted.

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Section 2. R.S. 46:437.11(F) is hereby enacted to read as follows:

§437.11. Provider agreements

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F. In accordance with federal regulations and subject to the approval of the Centers for Medicare and Medicaid Services, the secretary of the Department of Health and Hospitals shall not terminate the provider agreement of a health care provider based exclusively upon an interruption in the provision of health care services when such interruption is solely the result of

1 **the events which were the subject of an executive order or proclamation of**
 2 **emergency or disaster, including the subsequent rebuilding or renovation of**
 3 **such facility.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Mary Dozier O'Brien.

DIGEST

McPherson (SB 107)

Present law provides for licensing standards for health care facilities, including the voluntary surrender of a license.

Present law provides for the facility need review process with respect to long term care providers, particularly nursing homes and intermediate care facilities for the mentally retarded (ICF/MR).

Present law provides for the termination, expiration, or revocation of such facility need review approval based upon the cessation of the provision of services.

Present law provides that DHH may terminate a health care provider agreement based upon the cessation of the provision of services.

Proposed law provides relative to an interruption in the provision of health care services by a provider operating in an area or areas affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724.

Proposed law provides for the impact of an executive order or proclamation of emergency or disaster upon the licensure process in areas affected by the emergency or disaster. The facilities whose licensing processes are affected are:

1. Adult day health care facility.
2. Substance abuse/addiction treatment facility.
3. Ambulatory surgery center.
4. Case management provider.
5. Urine drug screening provider.
6. Home health agency.
7. Hospice.
8. Hospital.
9. Nursing home.
10. Rural health clinic.
11. Intermediate care facility for the mentally retarded (ICF/MR).
12. End stage renal disease facility.

Proposed law provides for the continuation of facility need review approval for nursing homes and ICF/MR's operating in areas affected by an executive order or proclamation of emergency or disaster, given certain conditions.

Proposed law provides that, in accordance with federal regulations and subject to CMS approval, DHH may not terminate the provider agreement of a health care facility which has experienced an interruption of services as a result of the emergency or disaster which was the subject of such an executive order or proclamation issued in accordance with R.S. 29:724.

Proposed law provides for a waiver of the minimum bed requirement for hospitals for a

hospital which is the single hospital in a parish, damaged as a result of the event which is the subject of a declaration of emergency or disaster and such hospital establishes a temporary or replacement facility.

Proposed law provides for licensing of outpatient off-campus facilities established by licensed hospitals who are in areas affected by the event which is the subject of a proclamation of emergency or disaster.

Proposed law provides that in order to obtain retroactive licensure to the date that services were provided in an outpatient off-campus facility, the licensed hospital shall inform DHH of its intent to operate such a facility and shall attest to DHH that the off-campus facility is in compliance with regulations. Such documents shall be provided to DHH prior to December 31, 2005.

(Amends R.S. 40:2109(B)(7); adds R.S. 40:2007.1 and 2116(J) and R.S. 46:437.11(F))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill.

1. Remove provisions relative to a facility that re-opens at the same municipal or physical address.
2. Add provisions relative to outpatient off-campus facilities of licensed hospitals and their licensure requirements.
3. Allow outpatient off-campus facilities to be licensed retroactively to the date the provision of services began, provided that by December 31, 2005, the licensed hospital notifies DHH of its intent to open such a facility and attests that the outpatient facility was in compliance with regulatory requirements on the date that services began being provided.
4. Provide for a waiver of the minimum patient bed number for a temporary or replacement facility, in the case of a hospital which was the only hospital in a parish prior to a proclamation of emergency or disaster. The hospital shall have been so damaged as a result of the event which was the subject of the proclamation of emergency or disaster. The temporary licensure shall remain effective for not more than two years.
5. Provide that, in accordance with federal regulations and subject to CMS approval, DHH shall not terminate the provider agreement based solely upon an interruption of the provision of services as a result of an event which is the subject of a proclamation of emergency or disaster.