



**State of Louisiana**  
Department of Health and Hospitals  
Office of the Secretary

February 13, 2015

**MEMORANDUM**

**TO:** The Honorable John A. Alario, President, Louisiana Senate  
The Honorable Chuck Kleckley, Speaker of the House  
The Honorable David Heitmeier, Chair, Senate Committee on Health and Welfare  
The Honorable Scott Simon, Chair, House Committee on Health and Welfare  
The Honorable Jack Donahue, Chair, Senate Finance Committee  
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

**FROM:** Kathy H. Kliebert  
Secretary

**RE:** Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are **resubmitting the Oversight Report for Abortion Facilities - Licensing Standards**. The Department submitted the original report for this proposed Rule on February 10, 2015, and subsequently determined that a new Oversight Report should be submitted to ensure that all of the requirements of the Act are satisfied.

The Department published a Notice of Intent on this proposed Rule in the December 20, 2014 issue of the *Louisiana Register* (Volume 40, Number 12). A public hearing was held on January 29, 2015 at which Department of Health and Hospitals staff, members of the general public, news media, providers, and various advocate groups were present. Oral testimony was given and a large volume of written comments were received regarding this proposed Rule. Due to the volume of comments received, the Department issued a global response to the comments.

The Department anticipates adopting the Notice of Intent as a final Rule in the April 20, 2015 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. a summary of all testimony at the public hearing;
5. a summary of all comments received by the agency; and
6. the agency's global response to comments.

KHK/WJR/DAB

Attachments (6)

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Abortion Facilities  
Licensing Standards  
(LAC 48:I.Chapter 44)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal and replace LAC 48:I.Chapter 44 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2175.1 et seq. 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 licensing of abortion facilities in order to clarify the licensing requirements and staffing provisions (*Louisiana Register*, Volume 39, Number 8).

Since 2010, the Louisiana Legislature has enacted several Acts which amended the laws governing abortion services and the Louisiana Children's Code. In December of 2013, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated a Notice of Intent which proposed to repeal and replace the licensing standards governing outpatient abortion facilities to revise and clarify these provisions in order to comply with enacted legislation (*Louisiana Register*, Volume 39,

Number 12). As a result of the comments received, the department abandoned the Notice of Intent published in the December 20, 2013 edition of the *Louisiana Register*.

After further consideration, the department now proposes to repeal and replace the provisions governing the licensing standards for abortion facilities in order to incorporate the changes imposed by legislation, and to further revise and clarify these provisions.

## **Title 48**

### **PUBLIC HEALTH GENERAL**

#### **Part I. General Administration**

#### **Subpart 3. Licensing and Certification**

#### **Chapter 44. Abortion Facilities**

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

##### **§4401. Definitions**

*Abortion*—any surgical procedure performed, after pregnancy has been medically verified, with the intent to cause the termination of the pregnancy, other than for the purpose of:

1. producing a live birth;
2. removing an ectopic pregnancy; or
3. removing a dead fetus caused by a spontaneous

abortion.

*Active Admitting Privileges*—the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the department, with the ability to admit

a patient and to provide diagnostic and surgical services to such patient.

1. The hospital shall be located not further than 30 miles from the location at which the abortion is performed or induced, and shall provide obstetrical or gynecological health care services.

2. Violations of active admitting privileges provisions shall be fined not more than \$4,000 per violation.

*Administrator*-the person responsible for the day-to-day management, supervision, and operation of the outpatient abortion facility.

*Change of Ownership (CHOW)*-transfer of ownership to someone other than the owner listed on the initial licensing application or license renewal application.

*Coerced Abortion*-the use of force, intimidation, threat of force, threat of deprivation of food and shelter, or the deprivation of food and shelter by a parent or any other person in order to compel a female child to undergo an abortion against her will, whether or not the abortion procedure has been attempted or completed.

*CRNA*-a Certified Registered Nurse Anesthetist licensed by the Louisiana State Board of Nursing who is under the supervision of the physician performing the abortion or an anesthesiologist who is immediately available if needed as

defined in the medical staff bylaws and in accordance with applicable licensing boards. A CRNA is an advanced practice registered nurse educated in the field of nurse anesthesia and certified according to the requirements of a nationally recognized certifying body such as the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists, as approved by the board and who is authorized to select and administer anesthetics or ancillary services to patients under their care.

*Department*—the Department of Health and Hospitals (DHH).

*Facility Need Review (FNR)*—pursuant to R.S. 40:2116, a process that requires licensure applicants to prove the need for the services prior to applying for licensure.

*First Trimester*—the time period up to 14 weeks after the first day of the last menstrual period.

*General Anesthesia*—any drug, element, or other material which, when administered, results in a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including a loss of ability to independently maintain an airway and respond purposefully to physical stimuli or verbal command.

*Gestational Age*—the age of the unborn child as measured by the time elapsed since the first day of the last menstrual

period as determined by a physician and confirmed through the use of an ultrasound.

*Health Standards Section (HSS)*-the Department of Health and Hospitals, Health Standards Section.

*Medical Director*-a physician who is responsible for all of the medical care provided to patients in the outpatient abortion facility, and for the ethical and professional practices of the medical staff.

*OSFM*-the Department of Public Safety and Corrections, Office of State Fire Marshal, Public Safety Services.

*OPH*-the Department of Health and Hospitals, Office of Public Health.

*Outpatient Abortion Facility*-any outpatient facility or clinic, other than a hospital or an ambulatory surgical center as defined by applicable state law, in which any second trimester or five or more first trimester abortions per calendar year are performed.

*Patient*-the woman receiving services from an outpatient abortion facility.

*Peer Review*-the evaluation of work by one or more persons of similar competence to the producers of the work.

*Physician*-a doctor who possesses a current license to practice medicine in Louisiana, is in good standing with the Louisiana State Board of Medical Examiners, and whose license

does not restrict the doctor from performing the services at the outpatient abortion facility.

*Physician Assistant (PA)*-an individual who is currently approved by, licensed by, and in good standing with the Louisiana State Board of Medical Examiners to perform medical services under the supervision of a physician or group of physicians who are licensed by and registered with the Louisiana State Board of Medical Examiners to supervise a physician assistant and who is acting within the scope of all applicable state laws and the individual's professional license.

*Products of Conception*-placenta, amniotic sac or membrane, embryo, or fetal elements that result from a human pregnancy.

*Second Trimester*-the time period from 14 to 23 weeks after the first day of the last menstrual period.

*Secretary*-the secretary of the Louisiana Department of Health and Hospitals.

*Telecommunications*-any means of transmitting messages at a distance, including but not limited to:

1. telephones;
2. cell phones;
3. pagers; or
4. other similar devices which foster communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4403. General Licensing Provisions**

A. It shall be unlawful for outpatient abortion facilities in the initial licensing application process to accept patients or provide abortion services until licensed by the Department of Health and Hospitals (DHH). The department is the only licensing authority for outpatient abortion facilities in Louisiana.

B. Types of Licenses. The department shall have the authority to issue the following types of licenses:

1. full initial license;
2. provisional initial license;
3. full renewal license; and
4. provisional license.

C. An outpatient abortion facility shall be in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to an abortion or abortion procedures before the

outpatient abortion facility will be issued an initial license to operate.

D. An outpatient abortion facility license shall:

1. be issued only to the person or entity named in the initial licensing application;
2. be valid only for the outpatient abortion facility to which it is issued and only for the physical address named in the initial licensing application;
3. be valid for one year from the date of issuance, unless revoked or suspended, prior to that date, or unless a provisional initial license or provisional license is issued;
4. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the outpatient abortion facility;
5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

E. An outpatient abortion facility licensed by the department may only perform first and second trimester abortions pursuant to R.S. 40:2175.3.

F. A separately licensed outpatient abortion facility shall not use a name which is substantially the same as the name of another such facility licensed by the department. An

outpatient abortion facility shall not use a name which is likely to mislead the patient or their family into believing it is owned, endorsed, or operated by the state of Louisiana.

G. No branches, satellite locations, or offsite campuses shall be authorized for an outpatient abortion facility.

H. Plan Review Process. Submission of plan review to the Office of the State Fire Marshall is required for initial licensure, major renovation, and change of location.

1. Applicants are required to refer to the OSFM for laws, rules, and editions of adopted codes and standards applicable to plan review by the OSFM.

2. One complete set of plans and specifications (construction documents), with application and review fee, shall be submitted to the OSFM for review.

3. Plan review submittal to the OSFM shall be in accordance with applicable state laws, rules, regulations, and the following:

a. Modifications to Physical Environment which involve Major Renovations. Any proposed change to the physical environment which involves major renovations shall require plan review for compliance with requirements applicable at the time of the proposed change.

i. Painting, re-tiling floors, installation of carpet, and repairing of roof damage or

reroofing are not considered to be major renovations. Normal maintenance of a building does not require plan review by the OSFM.

ii. Major renovations may require a physical environment survey pursuant to §4407.D.5 and §4445.A.3.

b. The specific requirements outlined in the physical environment section of this Chapter.

c. Where services or treatment for four or more patients can be accommodated at more than one time, requirements applicable to Ambulatory Health Care occupancies, as defined by the most recently state-adopted edition of National Fire Protection Association (NFPA) 101, shall apply.

d. Where services or treatment for three or less patients can be accommodated at more than one time, requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101, shall apply.

4. Upon approval, one copy of the documents reviewed by the OSFM and one copy of the OSFM plan review letter shall be submitted to the department. Electronic transfer of documents by the OSFM to the department is allowed to satisfy this requirement.

5. Waivers. When a requirement of these rules regarding plan review would impose a hardship, financial or

otherwise, but would not adversely affect the health and safety of any patient, the outpatient abortion facility may submit a waiver request to the department, with supporting documentation. The issuance of a waiver by the department does not apply to the OSFM requirements for approval, which must be addressed exclusively by the outpatient abortion facility with the OSFM or the state health officer, as appropriate to the subject matter.

a. Waivers are granted only at the discretion of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4405. Initial Licensing Application Process**

A. The initial licensing application process requires submission and approval of plans and specifications (construction documents) and requires submission and approval of an initial licensing application packet, including but not limited to, a facility need review approval letter. No outpatient abortion facility shall accept patients or provide abortion services until in compliance with the provisions of this Chapter.

B. Plan Review Approval. All plans and specifications (construction documents) submitted by, or on behalf of, the

outpatient abortion facility are required to be submitted and approved by the Office of State Fire Marshal (OSFM) as part of the licensing application process.

C. Initial Licensing Application Packet. An initial licensing application packet for an outpatient abortion facility shall be obtained from the department. A complete initial licensing application packet shall be submitted to the department for approval and onsite survey. The applicant may not provide outpatient abortion services until properly licensed by the department.

D. To be considered complete, the initial licensing application packet shall include the following:

1. a completed outpatient abortion facility initial licensing application and the non-refundable initial licensing fee;
2. a copy of the approval letter of the architectural facility plans for the outpatient abortion facility by the OSFM;
3. a copy of the on-site inspection report with approval for occupancy from the OSFM;
4. a copy of the health inspection report from the Office of Public Health (OPH);

5. an organizational chart identifying the name, position, and title of each person composing the governing body and key administrative personnel;

6. a floor sketch or drawing of the premises to be licensed;

7. pursuant to R.S.40:2116, a copy of the facility need review approval letter; and

8. any other documentation or information required by the department for licensure, including but not limited to, a copy of any waiver approval letter, if applicable.

E. If the initial licensing application packet is incomplete as submitted, the applicant shall be notified in writing of the missing information and shall have 90 calendar days from receipt of the notification to submit the additional requested information. If the additional requested information is not timely submitted to the department within 90 calendar days, the initial licensing application shall be closed. If an initial licensing application is closed, an applicant who is still interested in operating an outpatient abortion facility must submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee to begin the initial licensing application process again, subject to any facility need review approval.

F. Initial Licensing Surveys. Upon receipt of a complete initial licensing application packet, the department shall conduct an on-site initial licensing survey prior to issuing a full initial license. The initial licensing survey shall be announced.

1. If it is determined that the applicant is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, and a potential threat to the health, safety, and welfare of the patients is presented, the department shall deny the initial licensing application.

2. If it is determined that the applicant is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by

law related to abortion or abortion procedures, the department shall issue a full initial license to the applicant.

3. If it is determined that the applicant is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, and welfare of the patients, the department may issue a provisional initial license.

G. Full Initial License. The full initial license issued by the department shall be valid until the expiration date shown on the license unless the license is revoked or suspended prior to that date.

H. Provisional Initial License. The provisional initial license issued by the department shall be valid for a period not to exceed six months.

1. When a provisional initial license is issued by the department, the applicant shall submit a plan of correction to the department for approval and also shall be required to

correct all deficiencies prior to the expiration of the provisional initial license.

2. Upon receipt of the applicant's plan of correction, the department shall conduct an unannounced follow-up survey, either on-site or by administrative desk review, to ensure the applicant is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures.

a. Following the follow-up survey, if it is determined that the applicant has corrected all deficiencies and has maintained compliance during the period of the provisional license, the department shall issue a full initial license for the remainder of the year.

b. Following the follow-up survey, if it is determined that the applicant has failed to correct all deficiencies, the provisional initial license shall expire unless otherwise determined by the department. The applicant shall be required to submit a newly completed initial licensing application packet and a new non-refundable initial licensing

fee to begin the initial licensing application process again subject to any facility need review approval.

I. Informal Reconsideration and Administrative Appeal.

The outpatient abortion facility does not have the right to request an informal reconsideration and/or an administrative appeal of the issuance or the expiration of a provisional initial license. An outpatient abortion facility that has been issued a provisional initial license is considered licensed and operational for the term of the provisional initial license. The issuance of a provisional initial license is not considered to be a denial of an initial licensing application, denial of a license renewal application, or license revocation for the purposes of this Chapter.

1. Informal Reconsideration. An outpatient abortion facility that has been issued a provisional initial license has the right to request an informal reconsideration regarding the validity of the deficiencies cited during the follow-up survey.

a. The request for an informal reconsideration must be in writing and received by HSS within five calendar days of receipt of the statement of deficiencies. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the outpatient abortion facility in writing.

b. The request for an informal reconsideration must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

c. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an informal reconsideration.

d. The outpatient abortion facility shall be notified in writing of the results of the informal reconsideration.

2. Administrative Appeal. An outpatient abortion facility that has been issued a provisional initial license has the right to request an administrative appeal regarding the validity of the deficiencies cited during the follow-up survey.

a. The request for an administrative appeal must be in writing and received by the Division of Administrative Law (DAL), or its successor, within 15 days of receipt of the statement of deficiencies cited during the follow-up survey.

b. The request for an administrative appeal must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

c. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an administrative appeal.

d. Upon expiration of the provisional initial license, the outpatient abortion facility shall immediately cease and desist providing abortion services unless the DAL, or its successor, issues a stay of the expiration.

e. Stay of the Expiration. The request for a stay of the expiration must be submitted with the request for an administrative appeal and received by the DAL, or its successor, within 15 days of receipt of the statement of deficiencies.

i. Following a contradictory hearing and only upon a showing that there is no potential harm to the patients being served by the outpatient abortion facility, the stay may be granted by the DAL, or its successor.

f. If a timely request for an administrative appeal is received, the DAL, or its successor, shall conduct the administrative appeal in accordance with the Administrative Procedure Act.

i. If the final decision of the DAL, or its successor, is to remove all deficiencies, the outpatient abortion facility's license shall be granted/re-instated upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department.

ii. If the final decision of the DAL, or its successor, is to uphold any of the deficiencies thereby affirming the expiration of the provisional initial license, the outpatient abortion facility shall:

(a). immediately cease and desist providing abortion services as an outpatient abortion facility;

(b). return the outpatient abortion facility license to the department; and

(c). notify the department in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person, within 10 days of the rendering of the administrative appeal judgment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4407. Survey Activities**

A. Any applicant or outpatient abortion facility shall be subject to licensing surveys conducted by department surveyors to ensure that an applicant or outpatient abortion facility is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating

to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, and also to ensure there is no present threat to the health, safety, and welfare of the patient.

B. Any applicant or outpatient abortion facility subject to licensing surveys conducted by the department shall:

1. allow department surveyors access to any and all requested documents and information on the licensed premises, including, but not limited to, patient medical records and outpatient abortion facility records that are relevant or necessary for the survey;

2. allow department surveyors access to interview any staff or other persons as necessary or required; and

3. not interfere with or impede the survey process for department surveyors while conducting any survey.

C. The department is entitled to access all books, records, or other documents maintained by or on behalf of the outpatient abortion facility on the licensed premises to the extent necessary to ensure compliance with this Chapter. Ensuring compliance includes permitting photocopying by the department or providing photocopies to the department of any records or other information by or on behalf of the outpatient

abortion facility as necessary to determine or verify compliance with this Chapter.

D. Types of Surveys. The department shall have the authority to conduct the following types of surveys:

1. Initial Licensing Surveys. The department shall conduct an on-site initial licensing survey to ensure the applicant is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures prior to issuing a full initial license. All initial licensing surveys shall be announced.

2. Annual Licensing Surveys. The department shall conduct an annual licensing survey. All annual licensing surveys shall be unannounced.

3. Complaint Surveys. The department shall conduct complaint surveys when a complaint is lodged against an outpatient abortion facility in accordance with R.S. 40:2009.13, et seq. All complaint surveys shall be unannounced.

4. Follow-up Surveys. The department may conduct a follow-up survey to ensure the outpatient abortion facility has

corrected all deficiencies cited in the previous survey and is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures. All follow-up surveys shall be unannounced.

5. Physical Environment Survey

a. An announced on-site survey to ensure the outpatient abortion facility is compliant with the applicable physical environment regulations due to the following:

i. major renovations of a currently licensed outpatient abortion facility; or

ii. relocation of a currently licensed outpatient abortion facility.

b. A physical environment survey may be conducted alone or conducted in conjunction with another survey.

E. Statement of Deficiencies. Following any survey, the department surveyors shall complete the statement of deficiencies documenting relevant findings including the deficiency, the applicable governing rule, and the evidence supporting why the rule was not met including, but not limited

to, observations, interviews, and record review of information obtained during the survey. The outpatient abortion facility shall receive a copy of the statement of deficiencies.

1. Display. The following statements of deficiencies issued by the department to the outpatient abortion facility must be posted in a conspicuous place on the licensed premises:

a. the most recent annual licensing survey statement of deficiencies; and

b. any follow-up and/or complaint survey statement of deficiencies issued after the most recent annual licensing survey.

2. Public Disclosure. Any statement of deficiencies issued by the department to an outpatient abortion facility shall be available for disclosure to the public within 30 calendar days after the outpatient abortion facility submits an acceptable plan of correction to the deficiencies or within 90 days of receipt of the statement of deficiencies, whichever occurs first.

F. Plan of Correction. The department may require a plan of correction from an outpatient abortion facility following any survey wherein deficiencies have been cited. The fact that a plan of correction is accepted by the department does not preclude the department from pursuing other actions against the

outpatient abortion facility as a result of the cited deficiencies.

G. Informal Reconsideration. The applicant and/or outpatient abortion facility shall have the right to request an informal reconsideration of any deficiencies cited during any initial licensing survey, annual licensing survey, and follow-up survey.

1. The request for an informal reconsideration must be in writing and received by HSS within 10 calendar days of receipt of the statement of deficiencies. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the outpatient abortion facility in writing.

2. The request for an informal reconsideration must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

3. Correction of the deficiency or deficiencies cited in any survey shall not be the basis for an informal reconsideration.

4. The outpatient abortion facility may appear in person at the informal reconsideration and may be represented by counsel.

5. The outpatient abortion facility shall receive written notice of the results of the informal reconsideration.

6. The results of the informal reconsideration shall be the final administrative decision regarding the deficiencies and no right to an administrative appeal shall be available.

H. Complaint Survey Informal Reconsideration. Pursuant to R.S. 40:2009.13 et seq., an outpatient abortion facility shall have the right to request an informal reconsideration of the validity of the deficiencies cited during any complaint survey, and the complainant shall be afforded the opportunity to request an informal reconsideration of the findings.

1. The department shall conduct the informal reconsideration by administrative desk review.

2. The outpatient abortion facility and/or the complainant shall receive written notice of the results of the informal reconsideration.

3. Except for the right to an administrative appeal provided in R.S. 40:2009.16.(A), the results of the informal reconsideration shall be the final administrative decision and no right to an administrative appeal shall be available.

I. Sanctions. The department may impose sanctions as a result of deficiencies cited following any survey. A sanction may include, but is not limited to:

1. civil fine(s);

2. revocation of license;
3. denial of license renewal application;
4. immediate suspension of license; and
5. any and all sanctions allowed under federal or state law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4409. Changes in Outpatient Abortion Facility Information or Key Administrative Personnel**

A. An outpatient abortion facility license shall be valid for the person or entity named as the outpatient abortion facility and for the physical address provided by the applicant on the initial licensing application or by the outpatient abortion facility in the licensing renewal application submitted to the department.

B. Change of Information. Any change regarding the outpatient abortion facility's entity name, "doing business as" name, mailing address, telephone number, or any combination thereof, shall be reported in writing to the department within five calendar days of the change. Any change regarding the entity name or "doing business as" name requires a change to the

outpatient abortion facility license and shall require a \$25 fee for the issuance of an amended license.

C. Change of Key Administrative Personnel. Any change regarding the outpatient abortion facility's key administrative personnel shall be reported in writing to the department within five calendar days of the change. For the purposes of this Chapter, key administrative personnel includes the administrator and medical director, and the outpatient abortion facility shall provide the individual's name, hire date, and qualifications as defined in this Chapter.

D. Change of Ownership. A change of ownership (CHOW) of an outpatient abortion facility shall be reported in writing to the department at least five calendar days prior to the change. Within five calendar days following the change, the new owner shall submit to HSS all legal documents relating to the CHOW, an initial licensing application packet, and the non-refundable initial licensing fee. Once all required documentation and information is submitted and complete, HSS will review. If the CHOW is approved, the department shall issue a new license in the name of the new owner.

1. If the department has issued a notice of license revocation, denial of renewal, provisional license, or a notice of immediate suspension at the time the CHOW is submitted, the department shall deny the CHOW.

2. If there are any outstanding fees, fines, or monies owed to the department by the existing licensed entity, the CHOW will be suspended until payment of all outstanding amounts.

E. Change of Physical Address. An outpatient abortion facility that intends to change the physical address is required to obtain plan review approval from the OSFM in accordance with the provisions of this Chapter.

1. Because the license of an outpatient abortion facility is not transferrable or assignable, any proposed change in the physical address requires the outpatient abortion facility to submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee. In addition, the outpatient abortion facility must submit a written notice of intent to relocate to the HSS at the time the plan review request is submitted to the OSFM for approval.

2. The department shall conduct an announced on-site survey at the proposed new location prior to relocation of the facility.

3. Any change regarding the outpatient abortion facility's physical address shall result in a new anniversary date for the license issued.

F. Duplicate License. Any request for a duplicate license shall be accompanied by a \$25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4411. License Renewal Application Process**

A. License Renewal Application Packet. A license renewal application packet for an outpatient abortion facility shall be obtained from the department. A complete license renewal application packet shall be submitted to the department at least 30 calendar days prior to the expiration of the current license.

B. To be considered complete, the license renewal application packet shall include the following:

1. a completed outpatient abortion facility license renewal application and the non-refundable license renewal fee;
2. a copy of the most current on-site inspection report with approval for occupancy from the OSFM;
3. a copy of the most current health inspection report with recommendation for licensing from the OPH;
4. payment of any outstanding fees, fines, or monies owed to the department; and
5. any other documentation required by the department for licensure.

C. If the license renewal application packet is incomplete as submitted, the outpatient abortion facility shall

be notified in writing of the missing information, and shall have 10 calendar days from receipt of the notification to submit the additional requested information. If the additional requested information is not received within 10 calendar days or prior to the expiration of the current license, it will result in the voluntary non-renewal of the outpatient abortion facility license.

D. Licensing Renewal - Annual Licensing Survey. Upon receipt of a complete license renewal application packet, the department may conduct an on-site annual licensing survey. This annual licensing survey shall be unannounced.

1. If it is determined that the outpatient abortion facility is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, and that a potential threat to the health, safety, and welfare of the patients is presented, the department shall deny the license renewal application.

2. If it is determined that the outpatient abortion facility is in compliance with all applicable federal, state,

and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, the department shall issue a full renewal license to the outpatient abortion facility.

3. If it is determined that the outpatient abortion facility is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, and welfare of the patients, the department may issue a provisional license.

E. The issuance of a full renewal license does not in any manner affect any previously existing sanction by the department against an outpatient abortion facility including, but not limited to, civil fine(s) and/or plan of correction(s).

F. If the department has issued a notice of license revocation or a notice of immediate suspension of license at the time the license renewal application packet is submitted, the department shall deny the license renewal application.

G. Full Renewal License. The full renewal license issued by the department shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

H. Provisional License. The provisional license issued by the department shall be valid for a period not to exceed six months.

1. At the discretion of the department, the provisional license may be extended for an additional period not to exceed 90 calendar days in order for the outpatient abortion facility to correct the deficiencies cited following any survey.

2. When a provisional license is issued by the department, the outpatient abortion facility shall submit a plan of correction to the department for approval and also shall be required to correct all deficiencies prior to the expiration of the provisional license.

3. Upon receipt of the outpatient abortion facility's plan of correction, the department shall conduct an unannounced follow-up survey, either on-site or by desk review, to ensure the outpatient abortion facility is in compliance with

all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures.

a. Following the follow-up survey, if it is determined that the outpatient abortion facility has corrected all deficiencies and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the issuance of the outpatient abortion facility license.

b. Following the follow-up survey, if it is determined that the outpatient abortion facility has failed to correct all deficiencies or has not maintained compliance during the period of the provisional license, or if new deficiencies are cited during the follow-up survey that present a threat to the health, safety, and welfare of a patient, the provisional license shall expire unless otherwise determined by the department. The outpatient abortion facility shall submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee to begin the initial

licensing application process again, subject to any facility need review approval.

I. Informal Reconsideration and Administrative Appeal. The outpatient abortion facility does not have the right to request an informal reconsideration and/or an administrative appeal of the issuance or expiration of a provisional license. An outpatient abortion facility that has been issued a provisional license is considered licensed and operational for the term of the provisional license. The issuance of a provisional license is not considered to be a denial of an initial licensing application, denial of a license renewal application, or license revocation for the purposes of this Chapter.

1. Informal Reconsideration. An outpatient abortion facility that has been issued a provisional license has the right to request an informal reconsideration regarding the validity of the deficiencies cited during the follow-up survey.

a. The request for an informal reconsideration must be in writing and received by HSS within five calendar days of receipt of the statement of deficiencies cited during the follow-up survey. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the outpatient abortion facility in writing.

b. The request for an informal reconsideration must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

c. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an informal reconsideration.

d. The outpatient abortion facility shall be notified in writing of the results of the informal reconsideration.

2. Administrative Appeal. An outpatient abortion facility that has been issued a provisional license has the right to request an administrative appeal regarding the validity of the deficiencies cited during the follow-up survey.

a. The request for an administrative appeal must be in writing and received by the DAL, or its successor, within 15 days of receipt of the statement of deficiencies cited during the follow-up survey.

b. The request for an administrative appeal must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

c. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an administrative appeal.

d. Upon expiration of the provisional license, the outpatient abortion facility shall immediately cease and desist providing abortion services unless the DAL, or its successor, issues a stay of the expiration.

e. Stay of the Expiration. The request for a stay of the expiration must be submitted with the request for an administrative appeal and received by the DAL, or its successor, within 15 days of receipt of the statement of deficiencies.

i. Following a contradictory hearing and only upon a showing that there is no potential harm to the patients being served by the outpatient abortion facility, the stay may be granted by the DAL, or its successor.

f. If a timely request for an administrative appeal is received, the DAL, or its successor, shall conduct the administrative appeal in accordance with the Administrative Procedure Act.

i. If the final decision of the DAL, or its successor, is to remove all deficiencies, the outpatient abortion facility's license will be granted/re-instated upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department.

ii. If the final decision of the DAL, or its successor, is to remove some but not all deficiencies, the department shall have the discretion to determine the operational status of the outpatient abortion facility.

iii. If the final decision of the DAL, or its successor, is to uphold the deficiencies thereby affirming the expiration of the provisional license, the outpatient abortion facility shall:

(a). immediately cease and desist providing abortion services as an outpatient abortion facility;

(b). return the outpatient abortion facility license to the department; and

(c). notify the department in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person, within 10 days of the rendering of the administrative appeal judgment.

#### J. Voluntary Non-Renewal of License

1. If an outpatient abortion facility fails to timely renew its license, the license shall expire on its face and is considered to be a voluntary non-renewal of license. At such time, the outpatient abortion facility shall immediately cease and desist providing abortions as an outpatient abortion facility.

2. Notice of Voluntary Non-Renewal of License. The outpatient abortion facility must provide advanced written notice of its voluntary non-renewal of license at least 30 calendar days prior to the date of the expiration of the outpatient abortion facility license. The notice of voluntary non-renewal of the license must be provided to all of the outpatient abortion facility's staff, including the medical director, to any patient having an abortion procedure within the last 30 calendar days of operation, and to HSS.

3. In addition, the outpatient abortion facility shall notify HSS in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person.

4. As this is a voluntary action on the part of the outpatient abortion facility, no informal reconsideration or administrative appeal rights shall be available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4413. Cessation of Business**

A. Outpatient Abortion Facility Duties and Responsibilities. An outpatient abortion facility that

voluntarily closes or ceases operations is considered to have surrendered its license to operate.

B. Except as provided in §4453 of these licensing regulations, a license shall be immediately null and void if an outpatient abortion facility ceases to operate.

C. A cessation of business is deemed to be effective the date on which the facility stopped offering or providing services to the community.

D. Upon the cessation of business, the facility shall immediately return the original license to the Department.

E. Cessation of business is deemed to be a voluntary action on the part of the facility. The outpatient abortion facility does not have a right to appeal a cessation of business.

1. Notice of Cessation of Business. To the extent possible, the outpatient abortion facility shall provide advanced written notice of its cessation of business at least 30 calendar days prior to the date it intends to cease business operations. The notice of cessation of business must be provided to all the outpatient abortion facility's staff, including the medical director, to any patient having an abortion procedure within the last 30 days of operation, and to HSS.

2. In addition to the notice, the outpatient abortion facility shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

a. the effective date of the closure;

b. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's patients' medical records;

c. the name of an appointed custodian(s) who shall provide the following:

i. access to the records and copies of the records to the patient or authorized representative, upon presentation of proper authorization(s); and

ii. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss, and destruction; and

d. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing facility, at least 15 days prior to the effective date of closure.

F. If an outpatient abortion facility fails to follow the procedures of this Section, any owner, officer, member, manager, director, or administrator of the outpatient abortion facility may be prohibited from owning, managing, directing, or operating

another outpatient abortion facility in the state of Louisiana for two years.

G. Once an outpatient abortion facility has ceased doing business, the facility shall not provide services until it has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4415. Denial of an Initial License, Denial of License Renewal Application, and License Revocation**

A. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the outpatient abortion facility is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures, and a potential threat to the health, safety, and welfare of the patients is presented.

2. The department shall deny an initial license for any of the reasons a license may be revoked or non-renewed pursuant to the provisions of this Chapter.

B. Denial of License Renewal Application and License Revocation. The department may deny a license renewal application or revoke a license for any of the following reasons:

1. failure to be in substantial compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures;

2. failure to comply with the terms and provisions of an education letter or settlement agreement;

3. failure to protect a patient from any act by staff, employee or other patient posing a threat to a patient's health and safety while on the licensed premises receiving services provided by the outpatient abortion facility;

4. knowingly providing false, forged, or altered statements or information on any documentation required to be

submitted to the department or required to be maintained by the outpatient abortion facility, including, but not limited to:

a. the initial licensing application packet or the license renewal application packet;

b. data forms;

c. patient medical records or outpatient abortion facility records; or

d. matters under investigation by the department, the Office of the Attorney General, or law enforcement agencies;

5. knowingly making a false statement or providing false, forged, or altered information or documentation to DHH employees or to law enforcement agencies;

6. employing false, fraudulent, or misleading advertising practices;

7. an owner, officer, member, manager, administrator, director, managing employee, or person designated to manage or supervise patient care has either pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the adjudicating court:

a. For purposes of these provisions, conviction of a felony means a felony relating to any of the following:

i. the assault, abuse, or neglect of a patient;

ii. cruelty, exploitation, or the sexual battery of a juvenile or the infirmed;

iii. a drug offense;

iv. crimes of a sexual nature;

vi. possession, use of a firearm or deadly weapon; or

vii. fraud or misappropriation of federal or state funds;

8. failure to comply with all reporting requirements in a timely manner, as required by all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter addressed by law related to abortion or abortion procedures;

9. failure to allow the department surveyors access to any and all requested documents and information on the licensed premises, including, but not limited to, patient medical records and outpatient abortion facility records, that are relevant or necessary for the survey;

10. failure to allow the department surveyors access to interview any staff or other persons as necessary or required;

11. interfering or impeding with the survey process;

12. bribery, harassment, intimidation, or solicitation of any patient, by or on behalf of the outpatient abortion facility, designed to cause that patient to use or retain the services of the outpatient abortion facility; or

13. failure to timely pay any licensing fees, outstanding sanctions, or other fees due to the department. For the purposes of this Chapter, any payments returned for insufficient funds are considered failure to timely pay.

C. Notice. The secretary shall provide 30 calendar days written notice of the denial of initial license, notice of denial of license renewal application, and notice of license revocation.

D. Administrative Reconsideration. The applicant and/or outpatient abortion facility has the right to request an administrative reconsideration of a decision by the department to deny an initial license, to deny a license renewal application, or to issue a revocation action of a license to operate an outpatient abortion facility. The applicant and/or outpatient abortion facility will receive written notice of the final results and decision. However, there is no right to

request an informal reconsideration of a voluntary non-renewal of license as provided in this Chapter.

1. The request for an administrative reconsideration must be in writing and received by HSS within 15 calendar days of receipt of the notice of the denial of initial license, notice of denial of license renewal application, or notice of license revocation.

2. The request for an administrative reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an administrative reconsideration is received, HSS shall schedule the informal reconsideration and notify the applicant and/or outpatient abortion facility in writing.

4. The applicant and/or outpatient abortion facility shall have the right to appear in person at the administrative reconsideration and may be represented by counsel.

5. Correction of a deficiency or deficiencies that are the basis for the denial of initial license, denial of license renewal application, or license revocation shall not be a basis for an administrative reconsideration.

6. The administrative reconsideration process is not in lieu of the administrative appeals process.

7. The applicant and/or outpatient abortion facility shall receive written notice of the results of the informal reconsideration.

E. Administrative Appeals. The applicant and/or outpatient abortion facility has the right to request a suspensive administrative appeal of the secretary's decision to deny an initial license, deny a license renewal application, or to revoke a license to operate an outpatient abortion facility. There is no right to request a suspensive administrative appeal of a voluntary non-renewal of license as provided in this Chapter.

1. The request for a suspensive administrative appeal must be in writing and received by the Office of the Secretary within 30 calendar days of receipt of the notice of the results of the administrative reconsideration. A copy of the request for a suspensive administrative appeal shall be submitted to the DAL, or its successor, for docketing and handling the appeal.

a. Administrative Appeal Only. The applicant and/or outpatient abortion facility may forego its right to an administrative reconsideration and proceed directly to a suspensive administrative appeal. In such a case, the request for a suspensive administrative appeal must be in writing and received by the Office of the Secretary within 30 calendar days

of receipt of the notice of denial of initial licensing application, notice of denial of license renewal application, or notice of license revocation. The provisions of this Chapter shall otherwise govern this suspensive administrative appeal.

2. If a timely request for a suspensive administrative appeal is received, the Office of the Secretary shall forward the applicant and/or outpatient abortion facility's request and any accompanying documentation, to the DAL, or its successor, to be docketed, and send a copy of such request to the applicant or outpatient abortion facility either by U.S. mail, facsimile, or email.

3. The request for a suspensive administrative appeal shall state the basis and specific reasons for the appeal, and include any documentation that demonstrates that the determination was made in error.

4. If a timely request for a suspensive administrative appeal is received by the Office of the Secretary, the denial of license renewal application or license revocation shall be suspensive, and the outpatient abortion facility shall be allowed to continue to operate and provide abortions services until such time as the DAL, or its successor, issues a final administrative decision.

5. Correction of a deficiency or deficiencies that is the basis for the denial of the initial license, denial of

the license renewal application, or license revocation shall not be a basis for a suspensive administrative appeal.

6. If the final decision of the DAL, or its successor, is to reverse the denial of an initial license, the applicant's license will be granted upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department. If the final decision of the DAL, or its successor, is to reverse the denial of a license renewal application or license revocation, the license will be reinstated upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department.

7. If the final decision of the DAL, or its successor, is to affirm the denial of a license renewal application or license revocation, the outpatient abortion facility shall:

- a. immediately cease and desist providing abortion services as an outpatient abortion facility;
- b. provide written notice to all of the outpatient abortion facility's staff, including the medical director, and to any patient having an abortion procedure within the last 30 calendar days of operation;
- c. return the outpatient abortion facility license to the department; and

d. notify the department in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person, within 10 days of the rendering of the administrative appeal judgment.

F. Prohibition Following Loss of License. If a license is revoked or renewal of license is denied, other than for cessation of business or non-operational status, or if the license is surrendered in lieu of an adverse action, any owner, officer, member, manager, director, or administrator of the outpatient abortion facility may be prohibited from owning, managing, directing, or operating another outpatient abortion facility in the state of Louisiana for two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4417. Immediate Suspension of License**

A. Pursuant to applicable state law, the secretary may issue an immediate suspension of a license if any investigation or survey determines that the applicant or outpatient abortion facility is in violation of any provision of applicable state laws, in violation of the rules promulgated by the department, or in violation of any other federal or state law or regulation,

and the secretary determines that the violation or violations pose an imminent or immediate threat to the health, welfare, or safety of a client or patient.

B. Notice of Immediate Suspension of License. The secretary shall provide written notice of the immediate suspension of license.

C. Effective date. The suspension of the license is effective immediately upon the receipt of the written notice of immediate suspension of license.

D. Administrative Appeal. The outpatient abortion facility shall have the right to request a devolutive administrative appeal of the immediate suspension of license.

1. The request for a devolutive administrative appeal must be in writing and submitted to the DHH Office of the Secretary within thirty 30 calendar days of receipt of the notice of immediate suspension of license.

2. The request for a devolutive administrative appeal shall specify in detail the reasons why the appeal is lodged.

E. Injunctive Relief. The outpatient abortion facility shall have the right to file for injunctive relief from the immediate suspension of license.

1. Venue. Any action for injunctive relief shall be filed with the district court for the Parish of East Baton Rouge.

2 Burden of Proof. Before injunctive relief may be granted, the outpatient abortion facility shall prove by clear and convincing evidence that the secretary's decision to issue the immediate suspension of license was arbitrary and capricious.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**Subchapter B. Administration and Organization**

**§4421. Governing Body**

A. The outpatient abortion facility shall be in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances.

B. The outpatient abortion facility shall have a governing body that assumes full responsibility for the total operation of the outpatient abortion facility.

1. The governing body shall consist of at least one individual who will assume full responsibility.

2. The outpatient abortion facility shall maintain documentation on the licensed premises identifying the following information for each member of the governing body:

- a. name;
- b. contact information;
- c. address; and
- d. terms of membership.

3. The governing body shall develop and adopt bylaws which address its duties and responsibilities.

4. The governing body shall, at minimum, meet annually and maintain minutes of such meetings documenting the discharge of its duties and responsibilities.

C. The governing body shall be responsible for:

1. ensuring the outpatient abortion facility's continued compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements, prohibited activity requirements, e.g. presenting or otherwise delivering any instruction or program on any health topic, including but not limited to human sexuality or family planning, to students at a public elementary or secondary school, or at a charter school

that receives state funding or knowingly providing any materials or media regarding human sexuality or family planning for distribution or viewing at a public elementary or secondary school, or at a charter school that receives state funding, or any other matter addressed by law related to abortion or abortion procedures;

2. designating a person to act as the administrator and delegating sufficient authority to this person to manage the day-to-day operations of the facility;

3. designating a person to act as the medical director and delegating authority to this person to allow him/her to direct the medical staff, nursing personnel, and medical services provided to each patient;

4. evaluating the administrator and medical director's performance annually, and maintaining documentation of such in their respective personnel files;

5. ensuring that upon hire and prior to providing care to patients and, at a minimum, annually, each employee is provided with orientation, training, and evaluation for competency according to their respective job descriptions;

6. developing, implementing, enforcing, monitoring, and annually reviewing in collaboration with the administrator, medical director, and registered nurse, written policies and procedures governing the following:

a. the scope of medical services offered;  
b. personnel practices, including, but not limited to:

i. developing job descriptions for licensed and non-licensed personnel consistent with the applicable scope of practice as defined by federal and state law;

ii. developing a program for orientation, training, and evaluation for competency; and

iii. developing a program for health screening;

c. the management of medical emergencies and the immediate transfer to a hospital of patients and born alive infants regardless of gestational age requiring emergency medical care beyond the capabilities of the outpatient abortion facility and such policies and procedures shall identify emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care; and

d. disaster plans for both internal and external occurrences;

7. approving all bylaws, rules, policies, and procedures formulated in accordance with all applicable state laws, rules, and regulations;

8. ensuring all bylaws, rules, policies, and procedures formulated in accordance with all applicable state laws, rules, and regulations are maintained on the licensed premises and readily accessible to all staff;

9. maintaining organization and administration of the outpatient abortion facility;

10. acting upon recommendations from the medical director relative to appointments of persons to the medical staff;

11. ensuring that the outpatient abortion facility is equipped and staffed to meet the needs of its patients;

12. ensuring services that are provided through a contract with an outside source are provided in a safe and effective manner;

13. ensuring that the outpatient abortion facility develops, implements, monitors, enforces, and reviews at a minimum, quarterly, a quality assurance and performance improvement (QAPI) program;

14. developing, implementing, monitoring, enforcing, and reviewing annually written policies and procedures relating to communication with the administrator, medical director, and medical staff to address problems, including, but not limited to, patient care, cost containment, and improved practices;

15. ensuring that disaster plans for both internal and external occurrences are developed, implemented, monitored, enforced, and annually reviewed and that annual emergency preparedness drills are held in accordance with the disaster plan. The outpatient abortion facility shall maintain documentation on the licensed premises indicating the date, type of drill, participants, and materials;

16. ensuring that the outpatient abortion facility procures emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care;

17. ensuring that the outpatient abortion facility orders and maintains a supply of emergency drugs for stabilizing and/or treating medical and surgical complications for intra-operative and post-operative care on the licensed premises, subject to the approval by the medical director; and

18. ensuring that the outpatient abortion facility develops, implements, enforces, monitors, and annually reviews written policies and procedures to ensure that products of conception are disposed of in compliance with the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and with any other applicable federal, state, and local statutes, laws, ordinances, and department rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4423. Staffing Requirements, Qualifications, and Responsibilities**

A. General Provisions. An outpatient abortion facility shall have enough qualified personnel as indicated under this Chapter who are available to provide direct patient care as needed to all patients and to provide administrative and nonclinical services needed to maintain the operation of the outpatient abortion facility in accordance with the provisions of this Chapter.

B. Administrator. The outpatient abortion facility shall have an administrator designated by the governing body who is responsible for the day-to-day management, supervision, and operation of the outpatient abortion facility. The administrator shall be a full-time employee, available and on-site, during the designated business hours.

1. Qualifications. The administrator shall be at least 18 years of age and possess a high school diploma or equivalent.

2. The outpatient abortion facility shall designate a person to act in the administrator's absence, and shall ensure

this person meets the qualifications of the administrator pursuant to this Chapter. The outpatient abortion facility shall maintain documentation on the licensed premises identifying this person and evidence of their qualifications.

3. Duties and Responsibilities. The administrator shall be responsible for:

a. employing licensed and non-licensed qualified personnel to provide the medical and clinical care services to meet the needs of the patients being served;

b. ensuring that upon hire and prior to providing care to patients, each employee is provided with orientation, training, and evaluation for competency as provided in this Chapter;

c. ensuring that written policies and procedures for the management of medical emergencies and the immediate transfer to a hospital of patients and born alive infants regardless of gestational age requiring emergency medical care beyond the capabilities of the outpatient abortion facility are developed, implemented, monitored, enforced, and annually reviewed, and readily accessible to all staff;

d. ensuring that emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care

are maintained in proper working order and are available for use on a day-to-day basis on the licensed premises;

e. ensuring that a licensed physician, who has admitting privileges at a hospital located not further than 30 miles from the location at which the abortion is performed or induced and provides obstetrical or gynecological health care services, to facilitate emergency care is on the licensed premises when a patient is scheduled to undergo an abortion procedure;

Note: The Department acknowledges that federal litigation is pending on the issue of admitting privileges. As such, licensing provisions regarding admitting privileges will only be enforced pursuant to Order, Judgment, Stipulation, or Agreement in the matter entitled June Medical Services LLC, et al versus Caldwell, et al, Case No. 3:14-cv-525, United States District Court, Middle District, and any matter consolidated with such matter.

f. ensuring that disaster plans for both internal and external occurrences are developed, implemented, monitored, enforced, and annually reviewed and that annual emergency preparedness drills are held in accordance with the disaster plan. The outpatient abortion facility shall maintain documentation on the licensed premises indicating the date, type of drill, participants, and materials;

g. ensuring that a licensed medical professional trained in CPR and trained in the use of emergency

medical equipment is on the licensed premises at all times when abortion procedures are being performed;

h. ensuring that patient medical records are completely and accurately documented in accordance with the provisions of this Chapter within 30 days from the abortion procedure; and

i. maintaining current credentialing and/or personnel files on each employee that shall include documentation of the following:

i. a completed employment application;

ii. job description;

iii. a copy of current health screening reports conducted in accordance with the outpatient abortion facility policies and procedures and in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, and regulations;

iv. documentation that each employee has successfully completed orientation, training, and evaluation for competency related to each job skill as delineated in their respective job description;

v. documentation that all licensed nurses have successfully completed a Basic Life Support course;

and,

vi. other pertinent information as required by the outpatient abortion facility's policies and procedures, including but not limited to, prohibited activity, e.g. presenting or otherwise delivering any instruction or program on any health topic, including but not limited to human sexuality or family planning, to students at a public elementary or secondary school, or at a charter school that receives state funding or knowingly providing any materials or media regarding human sexuality or family planning for distribution or viewing at a public elementary or secondary school, or at a charter school that receives state funding requirements in accordance with applicable state laws, rules and regulations.

4. All credentialing and/or personnel files shall be current and maintained on the licensed premises at all times.

C. Medical Staff. The outpatient abortion facility shall provide medical and clinical services. The outpatient abortion facility shall employ qualified medical staff to meet the needs of the patients. No person shall perform or induce an abortion unless that person is a physician who meets the following qualifications and requirements:

1. Qualifications. Each member of the facility's medical staff shall be a physician, as defined in this Chapter, who meets the following requirements:

a. is currently licensed to practice medicine in the state of Louisiana;

b. is in good standing currently with the Louisiana State Board of Medical Examiners;

c. is currently enrolled in, or has completed, a residency rotation in obstetrics and gynecology or family medicine; and

d. is not restricted from performing such services and whose license is not restricted from performing such services at an abortion facility.

2. Physician Requirements. On the date the abortion is performed or induced, the physician performing or inducing the abortion shall:

a. have active admitting privileges at a hospital that is located not further than 30 miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services; and

Note: The Department acknowledges that federal litigation is pending on the issue of admitting privileges. As such, licensing provisions regarding admitting privileges will only be enforced pursuant to Order, Judgment, Stipulation, or Agreement in the matter entitled June Medical Services LLC, et al versus Caldwell, et al, Case No. 3:14-cv-525, United States District Court, Middle District, and any matter consolidated with such matter.

b. provide the pregnant woman with all of the following before the abortion is performed or induced:

i. a telephone number by which the pregnant woman may reach the physician or licensed nurse or PA employed by the facility by which the abortion was performed or induced, who has 24 hours per day access to the woman's medical records so that the woman may request assistance related to any complications that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion; and

ii. the name and telephone number of the hospital nearest to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

3. Medical Director. The outpatient abortion facility shall have a medical director designated and approved by and accountable to the governing body who is responsible for all medical care provided to patients in the facility, and for the ethical and professional practices of the medical staff.

a. When an outpatient abortion facility has only one medical staff member, that individual shall serve as medical director.

b. The outpatient abortion facility shall designate a physician, as defined in this Chapter, to act in the medical director's absence. The outpatient abortion facility

shall maintain documentation on the licensed premises identifying this physician and evidence of his/her qualifications.

c. Duties and Responsibilities. The medical director shall be responsible for:

i. developing, implementing, enforcing, monitoring, and annually reviewing written policies and procedures governing the medical and clinical services at the outpatient abortion facility, including, but not limited to:

(a). pre-operative procedures, intraoperative procedures, post-operative care and procedures, discharge, and follow-up care;

(b). laboratory services;

(c). infection control;

(d). pharmaceutical services, including, but not limited to, identifying the drugs dispensed and/or administered to patients on the licensed premises;

(e). anesthesia services;

(f). emergency medical treatment, including, but not limited to:

(i). identifying emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care;

(ii). identifying and ensuring that a supply of emergency drugs for stabilizing and/or treating medical and surgical complications are maintained on the licensed premises;

(iii). identifying and ensuring that each patient, before an abortion is performed or induced, is given by the physician performing or inducing the abortion, a telephone number of the hospital nearest to the home of the pregnant woman at which an emergency arising from the abortion would be treated; and

(iv). identifying and ensuring that each patient, before an abortion is performed or induced, is given by the physician performing or inducing the abortion, a telephone number by which the pregnant woman may reach the physician, or licensed nurse or PA employed by the physician or facility at which the abortion was performed or induced, who has 24 hours per day access to the woman's relevant medical records so that the woman may request assistance related to any complication that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion;

(g). patient medical records and reporting requirements;

(h). the examination of fetal tissue;

- (i). the disposition of medical waste;
- (j). physical environment; and
- (k). quality assurance and performance improvement (QAPI) program;

- ii. developing, implementing, enforcing, monitoring, annually reviewing written bylaws, rules, policies, and procedures for self-governing of the professional activity of all medical staff members including, but not be limited to:

- (a). the structure of the medical staff;

- (b). review of the credentials, and training, and competency of each medical staff member to perform medical and clinical services, at least every two years, and to delineate and to recommend approval for individual privileges;

- (i). the recommendation shall be in writing and maintained on the licensed premises in the credentialing file;

- (ii). verification that each member of the medical staff is a physician who possesses a current license to practice medicine in Louisiana, is in good standing with the Louisiana State Board of Medical Examiners, and whose license does not restrict the physician from performing the services at the outpatient abortion facility;

(iii). evaluation for competency and past performance of each medical staff member, at a minimum, annually, which shall include monitoring and evaluation of patient care provided;

(iv). medical staff discipline; and

(v). grievance process;

iii. monitoring and reviewing, at a minimum, quarterly, in collaboration with the QAPI team/committee, the medical and clinical services provided by the outpatient abortion facility to ensure acceptable levels of quality of care and services;

iv. reviewing reports of all accidents or unusual incidents occurring on the licensed premises and reporting to the administrator potential health and safety hazards;

v. ensuring that each patient receiving medical and clinical services is under the professional care of a member of the medical staff who shall assess, supervise, and evaluate the care of the patient;

vi. ensuring that a member of the medical staff remains on the licensed premises until each patient is assessed to be awake, alert, and medically stable prior to discharge; and

vii. ensuring that a member of the medical staff shall be either present or immediately available by telecommunications to the staff when there is a patient on the licensed premises.

D. Nursing Staff. The outpatient abortion facility shall provide nursing services and shall employ qualified nursing staff to meet the needs of the patients.

1. Registered Nurse. The outpatient abortion facility shall have a registered nurse (RN) who is responsible for the overall direction of all nursing staff and nursing services provided.

a. Qualifications. The RN shall:

i. have a current, unrestricted Louisiana Registered Nurse license; and

ii. be in good standing with the Louisiana State Board of Nursing.

2. Duties and Responsibilities. The RN shall be responsible for:

a. developing, implementing, enforcing, monitoring, and annually reviewing written policies and procedures governing the following:

i. nursing personnel, including, but not limited to:

- (a). developing a job description that delineates responsibilities and duties for each category of licensed and non-licensed nursing staff consistent with acceptable nursing standards of practice;
  - (b). orientation;
  - (c). training; and
  - (d). evaluation for competency;
- ii. nursing care and services consistent with accepted nursing standards of practice;
  - b. assigning duties and functions to each licensed and non-licensed employee commensurate with his/her licensure, certification, experience, and competence consistent with acceptable nursing standards of practice;
  - c. verifying that each licensed nurse possesses a current and unrestricted license to practice nursing in Louisiana and is in good standing with their applicable state licensing board;
  - d. ensuring that the number of nursing staff on duty is sufficient to meet the needs of the patient(s);
  - e. ensuring that at least one licensed nurse is present when there is a patient receiving or recovering from an abortion procedure on the licensed premises;

f. ensuring that each licensed nurse working at the outpatient abortion facility has successfully completed a basic life support course; and

g. developing, implementing, enforcing, monitoring, and reviewing annually in collaboration with the medical director, written policies and procedures establishing a formalized program of in-service training and evaluation for competency for each category of licensed and non-licensed nursing staff and for all nursing care and services provided at the outpatient abortion facility.

i. The RN shall ensure that the training is related to each job skill as delineated in their respective job description.

ii. The RN shall ensure an evaluation for competency is performed for each category of licensed and non-licensed nursing staff and for all nursing care and services provided.

iii. The RN shall maintain documentation in the personnel file of each nursing staff member evidencing the content of the training that was provided, including the name of the evaluator, date, nurse's name, and documents provided.

iv. The RN shall maintain documentation in the personnel file of each nursing staff member evidencing that an evaluation for competency was conducted, including the name

of the evaluator, date, nurse's name, and a notation that the nurse is competent in each job skill as delineated in their respective job description.

E. Orientation and Training. The administrator shall develop, implement, enforce, monitor, and annually review, in collaboration with the medical director and registered nurse, written policies and procedures regarding orientation and training of all employees.

1. Orientation. Upon hire and prior to providing care to patients, all employees shall be provided orientation related to the outpatient abortion facility's written policies and procedures governing the following:

- a. organizational structure;
- b. confidentiality;
- c. grievance process;
- d. disaster plan for internal and external occurrences;
- e. emergency medical treatment;
- f. program mission;
- g. personnel practices;
- h. reporting requirements; and
- i. basic skills required to meet the health needs of the patients.

2. Training. Upon hire, and at a minimum, annually, all employees shall be provided training in each job skill as delineated in their respective job description.

a. Medical training of a licensed medical professional shall only be provided by a medical professional with an equivalent or higher license.

b. Training of a non-licensed employee related to the performance of job skills relative to medical and clinical services shall only be provided by a licensed medical professional consistent with the applicable standards of practice.

c. All training programs and materials used shall be available for review by HSS.

d. The administrator shall maintain documentation of all of the training provided in each employee's personnel files.

F. Evaluation for Competency. Upon hire, and at a minimum, annually, the outpatient abortion facility shall conduct an evaluation for competency of all employees related to each job skill as delineated in their respective job description.

1. The evaluation for competency shall include the observation of job skills and return demonstration by the employee.

2. Evaluation for competency of a licensed medical professional shall only be provided by a medical professional with an equivalent or higher license.

3. Evaluation for competency of a non-licensed employee related to the performance of job skills relative to medical and clinical services shall only be provided by a licensed medical professional consistent with their applicable scope of practice.

4. The administrator shall maintain documentation of all evaluations for competencies in each employee's personnel file.

G. Health Screening. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures governing health screening of personnel in accordance with all applicable federal, state, and local statutes, laws, ordinances, and department rules and regulations. The administrator shall maintain documentation of health screening reports in each employee's personnel file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4425. Patient Medical Records and Reporting Requirements**

A. General Provisions

1. The outpatient abortion facility shall establish and maintain a patient medical record on each patient.

2. The patient medical record shall be:

a. completely and accurately documented; and

b. readily available and systematically organized to facilitate the gathering of information.

3. The outpatient abortion facility shall ensure compliance with privacy and confidentiality of patient medical records, including information in a computerized medical record system, in accordance with the Health Insurance Portability and Accountability Act (HIPAA) regulations, and/or all applicable state laws, rules, and regulations.

4. Safeguards shall be established to protect the patient medical records from loss or damage and/or breach of confidentiality in accordance with all applicable state laws, rules, and regulations.

B. Retention of Patient Medical Records. Patient medical records shall be retained by the outpatient abortion facility for a period of not less than seven years from the date of discharge. If the woman is a minor, then the medical record of the minor shall be kept for a minimum of 10 years from the time the minor reaches the age of majority. Patient medical records shall be maintained on the premises for at least one year and shall not be removed except under court orders or subpoenas.

Any patient medical record maintained off-site after the first year shall be provided to the department for review no later than 24 hours from the time of the department's request.

Note: Refer to R.S. 9:2800.9.

C. Contents of Patient Medical Record

1. The following minimum data shall be kept on all patients:

- a. identification data;
- b. date of procedure;
- c. medical and social history;
- d. anesthesia and surgical history;
- e. physical examination notes;
- f. chief complaint or diagnosis;
- g. clinical laboratory reports;
- h. pathology reports;
- i. individualized physician's orders;
- j. radiological/ultrasound reports;
- k. consultation reports (when appropriate);
- l. medical and surgical treatment;
- m. progress notes, discharge notes, and discharge summary;
- n. nurses' notes, including, but not limited to, all pertinent observations, treatments, and medications dispensed and/or administered;

o. medication administration records, including, but not limited to, the date, time, medication, dose, and route.

p. documentation of any and all prescription drugs dispensed to each patient, including, but not limited to the:

- i. full name of the patient;
- ii. name of the prescribing physician;
- iii. name and strength of the drug;
- iv. quantity dispensed; and
- v. date of issue;

q. signed and dated authorizations, consents, releases, or notices required by all applicable federal, state, and local statutes, laws, ordinances, and department rules and regulations, including but not limited to:

i. a signed receipt of Point of Rescue Pamphlet; and

ii. a signed certification form in accordance with applicable state law indicating acknowledged receipt of informational materials concerning psychological impacts, illegal coercion, abuse, and human trafficking;

Note: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the

department publishes a notice of the availability of such materials.

r. operative report;

s. anesthesia report, including, but not limited to, the date, time, type of anesthesia, dose, and route; and

t. special procedures reports.

2. Each entry documented in the patient's medical record shall be signed by the physician as appropriate, e.g., attending physician, consulting physician, anesthesiologist, pathologist, etc. Nursing notes and observations shall be signed by the licensed nurse. All entries shall be in writing and contain the date, time, and signature of the individual(s) delivering the patient care and services.

D. Nothing in this Section is intended to preclude the use of automated or centralized computer systems or any other techniques for the storing of medical records, provided the regulations stated herein are met.

E. Other Reports. The outpatient abortion facility shall maintain a daily patient roster of all patients receiving a surgical or chemically induced abortion. Patients may be identified corresponding to the patient's medical record. This daily patient roster shall be retained for a period of three years.

F. Reporting Requirements

1. The outpatient abortion facility shall maintain documentation to support that the outpatient abortion facility is compliant with all reporting requirements, including, but not limited to, the induced termination of pregnancy (ITOP) form and other documentation as required by federal, state, and local statutes, laws, ordinances, and department rules and regulations.

2. The outpatient abortion facility shall report in accordance with all applicable state laws for the reporting of crimes against a child that include but are not limited to:

- a. rape;
- b. sexual battery;
- c. incest; and
- d. carnal knowledge of a juvenile.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4427. Quality Assurance and Performance Improvement Program (QAPI)**

A. The outpatient abortion facility shall develop, implement, enforce, maintain, and annually review a written QAPI program subject to approval by the governing body, which puts

systems in place to effectively identify issues for which quality monitoring and performance improvement activities are necessary. The QAPI program shall include plans of action to correct identified issues including, but not limited to, monitoring the effect of implemented changes and making necessary revisions to the plan of action.

1. Plans of Action. The outpatient abortion facility shall develop and implement a QAPI plan of action designed to effectively identify issues for which quality monitoring and performance improvement activities are necessary.

2. The QAPI plan of action shall include on a quarterly basis the following:

a. processes for receiving input regarding the quality of medical and clinical services received;

b. processes for review of patient medical records to ensure that such are complete and current;

c. processes for identifying on a quarterly basis the risk factors that affect or may affect the health and safety of the patients of the outpatient abortion facility receiving medical and clinical services. Examples may include, but are not limited to:

i. review and resolution of patient grievances; and

ii. review and resolution of patient/employee incidents involving medication errors and equipment failure;

d. a process to review and develop action plans to resolve all system wide issues identified as a result of the processes above.

3. The QAPI outcomes shall be documented and reported to the administrator in writing for action, as necessary, for any identified systemic problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**Subchapter C. Pre-operative, Intra-operative, and Post-Operative Procedures**

**§4431. Screening and Pre-Operative Services**

A. Verification of Pregnancy. The presence of an intrauterine pregnancy shall be verified by the following:

1. urine or serum pregnancy test performed on-site;  
and

2. either a detection of fetal heart tones or ultrasonography.

B. Gestational age shall be estimated by the following methods pre-operatively:

1. first date of last menstrual period, if known;
2. pelvic examination; and
3. ultrasonography.

C. Laboratory Tests

1. The laboratory tests listed below shall be performed within 30 days prior to the abortion procedure:
  - a. hematocrit or hemoglobin determination; and
  - b. Rh Factor status.
2. The results of the laboratory tests as required in §4331.C.1.a-b shall be documented in the patient's medical record.
3. The physician performing the abortion shall document acknowledgement of the results of the laboratory tests in the patient's medical record prior to the abortion procedure.

D. Minors

1. No physician shall perform or induce an abortion upon any pregnant woman who is under the age of 18 years and who is not emancipated judicially or by marriage unless the physician has received the following:
  - a. one of the following documents:
    - (i). a notarized statement, pursuant to applicable state laws, rules, and regulations, signed by either the mother, father, legal guardian, or tutor of the minor declaring that the affiant has been informed that the minor

intends to seek an abortion and that the affiant consents to the abortion; or

(ii). a court order pursuant to applicable state laws, rules, and regulations; and

b. a signed, dated, and timed document obtained by the attending physician and/or licensed nurse, before the administration of any type of anesthesia which indicates if any person has or has not compelled the female child to undergo an abortion against her will.

2. All documentation related to consent and coercion shall be maintained in the medical record.

E. Ultrasound Requirements. Except in the case of a medical emergency, consent to an abortion of an unborn child at any stage of gestational development is voluntary and informed only if an obstetric ultrasound is performed in accordance with the provisions of this Section and applicable state laws, rules, and regulations.

1. Qualifications to perform ultrasound. The ultrasound shall be performed by the physician who is to perform the abortion or a qualified person who is the physician's agent. For purposes of this Section, "qualified person" means a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment and is in compliance

with any other requirements of law regarding the operation of ultrasound equipment.

2. Requirements. At least 24 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

a. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

b. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if

present and viewable, along with the opportunity for the pregnant woman to ask questions;

c. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

d. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form;

e. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least ten years from the time the minor reaches the age of majority. The woman's medical files shall be kept confidential as provided by law.

3. Options to view or listen to required medical information shall be in accordance with applicable state laws, rules, and regulations.

a. A pregnant woman may choose not to exercise her option to request an ultrasound photograph print.

b. A pregnant woman may choose not to view the ultrasound images required to be provided to and reviewed with the pregnant woman.

c. A pregnant woman may choose not to listen to the sounds detected by the fetal heart monitor required to be provided to the pregnant woman.

F. Medical Emergencies. Upon a determination by a physician that a medical emergency, as defined pursuant to applicable state law, exists with respect to a pregnant woman, the outpatient abortion facility shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman.

G. Information and Informed Consent

1. Oral and Written Information Provided by Physician or Referring Physician

a. At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an abortion. The informed consent shall be communicated

both orally and in-person, and in writing, and shall be provided in a private room.

b. Documentation. The documentation of all such informed consent provided shall be maintained in the patient's medical record.

c. The informed consent shall also contain language explaining the following information to the pregnant woman seeking an abortion:

i. the option of reviewing and receiving an oral explanation of an obstetric ultrasound image of the unborn child;

ii. that the pregnant woman shall not be required to view or receive an explanation of the obstetric ultrasound images;

iii. that the pregnant woman shall not be penalized if she chooses not to view or receive an explanation of the obstetric ultrasound images;

iv. that the physician shall not be penalized if the pregnant woman chooses not to view or receive an explanation of the obstetric ultrasound images; and

v. inclusion in the patient's printed materials of a comprehensive list, compiled by the department, of facilities that offer obstetric ultrasounds free of charge.

2. Oral Information from a Physician or Qualified Person

a. When an initial contact is made by a person seeking to schedule an abortion for herself, a minor, or other adult woman, regardless of the means of contact, the physician who is to perform the abortion or any qualified person acting on behalf of the physician shall inform the person of the internet address of the department's abortion alternatives and informed consent website which includes links to mental health counseling.

3. Oral Information Provided by Physician, Referring Physician, or Qualified Person

a. At least 24 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. medical assistance may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of such assistance is contained on the department's website and printed materials;

ii. a pamphlet is available that describes the unborn child and contains a directory of agencies that offer an abortion alternative;

iii. the father of the unborn child is liable to assist in the support of the child, even if he has offered to pay for the abortion. In the case of rape this information may be omitted.

iv. the pregnant woman seeking an abortion is free to withhold or withdraw consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without loss of any state or federally funded benefits to which she might otherwise be entitled.

#### 4. Provision of Printed Materials

a. At least 24 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials, pursuant to any applicable state laws, rules, and regulations, by the physician who is to perform the abortion, the referring physician, or a qualified person, including but not limited to the following:

i. as a condition for consent to undergoing an elective abortion and, as such to be deemed voluntary and informed, the woman or minor female considering abortion shall be given a copy of the DHH Point of Rescue pamphlet by the physician who is to perform the abortion or a qualified person, except in the case of medical emergency as defined by applicable state laws.

Note: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials.

b. If the pregnant woman seeking an abortion is unable to read the materials, the material shall be read to her.

c. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

5. Certification and Reporting

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 24 hours prior to the abortion. This form shall be maintained in the woman's medical record.

b. Prior to performing the abortion, the physician who is to perform the abortion or his agent receives a copy of the written certification.

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 24 hour period has expired.

6. Reporting Requirements. Any physician who has provided the information and materials to any woman in

accordance with the requirements of this Section shall provide to the department:

a. with respect to a woman upon whom an abortion is performed, all information as required by applicable state laws, rules, and regulations as well as the date upon which the information and materials required to be provided under this Section were provided, as well as an executed copy of the certification form. This form shall be maintained in the woman's medical record;

b. with respect to any woman to whom the printed and oral information and materials have been provided pursuant to applicable state laws, rules, and regulations, but upon whom the physician has not performed an abortion, the name and address of the facility where the required information was provided and if executed by the woman, a copy of the certification form required. This form shall be maintained in the woman's medical record.

7. Information Provided by the Physician Performing or Inducing an Abortion. On the date the abortion is performed or induced, a physician performing or inducing the abortion shall provide the pregnant woman with all of the following before the abortion is performed or induced:

a. a telephone number by which the pregnant woman may reach the physician, or other health care personnel

employed by the physician or facility at which the abortion was performed or induced, who has 24 hours per day access to the woman's relevant medical records so that the woman may request assistance related to any complication that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion; and

b. the name and telephone number of the hospital nearest to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4433. Drug or Chemically Induced Abortion**

A. When any drug or chemical is used for the purpose of inducing an abortion as defined in R.S. 40:1299.35.1, the physician who prescribed the drug or chemical shall be in the same room and in the physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman.

B. The drug or chemical shall not be administered, dispensed, or otherwise provided to the pregnant woman by a physician or any person acting under the physician's direction unless the physician has obtained the voluntary and informed

consent of the pregnant woman pursuant to the provisions of state laws, rules and regulations and the requirements set forth in this Section.

C. If a physician prescribes, dispenses, administers, or provides any drug or chemical to a pregnant woman for the purpose of inducing an abortion as defined in R.S. 40:1299.35.1, the physician shall report the abortion to the Department of Health and Hospitals in accordance with applicable state laws, rules, and regulations, including R.S. 40:1299.35.10.

D. Documentation shall be recorded as to the date, time, method and name and signature of the physician who initially administered, dispensed, or otherwise provided the drug or chemical to the pregnant woman. This documentation shall be maintained in the patient's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4435. Intra-operative Procedures**

A. The outpatient abortion facility shall ensure that emergency medical equipment and supplies as required by the governing body, medical director and medical staff are available for intra-operative care and shall include, but are not limited to:

1. surgical or gynecologic table;
2. surgical instrumentation;
3. emergency drugs for stabilizing and/or treating medical and surgical complications as approved by the medical director;
4. oxygen;
5. intravenous fluids; and
6. sterile dressing supplies.

B. The outpatient abortion facility shall ensure that the medical equipment required for an abortion shall be maintained and immediately available to the physician in the procedure and/or post-anesthesia recovery area to provide emergency medical care and treatment.

C. During the abortion procedure, the patient shall be assessed and monitored by a licensed nurse for the following: level of consciousness, respiratory status, cardio-vascular status, and any potential adverse outcomes related to the abortion procedure such as adverse drug reactions, uncontrolled or excessive bleeding, etc. The results of this assessment shall be documented in the patient's medical record by the licensed nurse.

D. Immediately following the abortion procedure and prior to transfer to post-anesthesia recovery area, the patient shall be assessed and monitored by a licensed nurse for the following:

level of consciousness, respiratory status, cardio-vascular status, and any potential adverse outcomes related to the abortion procedure. The results of this assessment shall be documented in the patient's medical record by the licensed nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4437. Post-Operative Care, Procedures, and Discharge**

- A. Post-Operative Care and Procedures
1. The outpatient abortion facility shall have immediately available a supply of emergency drugs for stabilizing and/or treating medical and surgical complications for post-operative care on the licensed premises.
  2. The patient's recovery shall be supervised by a licensed physician or a licensed nurse trained in post-operative care.
  3. If general anesthesia is administered during the abortion procedure, the outpatient abortion facility shall have licensed nursing personnel trained in post-anesthesia care.
  4. Upon completion of an abortion procedure, the physician shall immediately perform a gross examination of the uterine contents and shall document the findings in the

patient's medical record. If no products of conception are visible, the physician shall assess the patient for risk of complications of an incomplete abortion or ectopic pregnancy.

5. Upon admission to the post-anesthesia recovery area, the patient shall be assessed by the licensed nurse for the following: level of consciousness, respiratory status, cardio-vascular status, pain level, bleeding, any potential outcomes related to the abortion procedure and any other medically appropriate assessments. The results of this assessment shall be documented by the licensed nurse in the patient's medical record.

6. A patient shall not be left unattended in the post-anesthesia recovery area.

7. Rh immunoglobulin administration shall be offered to the woman who is Rh-negative and such shall be documented in the patient's medical record. If Rh immunoglobulin is not administered in the facility, one of the following is required:

a. informed waiver signed by a patient who refuses RH immunoglobulin; or

b. documentation of other arrangements for administration of RH Immunoglobulin.

#### B. Discharge Procedures

1. The patient shall be given verbal and written post-operative instructions for follow-up care. Such

instructions given or provided by the physician performing or inducing the abortion shall include the telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician, or facility at which the abortion was performed or induced, who has 24 hours per day access to the woman's relevant medical records so that the woman may request assistance related to any complication that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion.

2. The patient shall also be given or provided, by the physician performing or inducing the abortion, the name and telephone number of the hospital nearest to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

3. A member of the medical staff shall remain on the licensed premises until each patient is assessed to be awake, alert, and medically stable prior to discharge.

4. A copy of the discharge instructions signed by the patient and the physician shall be maintained in the patient's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4439. Anesthesia Services**

A. Subject to the approval of the medical director, the outpatient abortion facility shall develop, implement, monitor, enforce, and annually review written policies and procedures governing the preparation of and administration of drugs relating to the types of anesthesia administered during the abortion procedure.

B. Local anesthesia, nitrous oxide, intramuscular, oral, and intravenous sedation shall be administered by the physician performing the abortion or by licensed nursing staff who have been deemed competent to administer sedation under the orders and supervision of the physician and pursuant to their scope of practice.

C. The physician performing the abortion shall be present on the licensed premises prior to and during the administration of all types of anesthesia.

D. General anesthesia, if used, shall be administered by an anesthesiologist or certified registered nurse-anesthetist (CRNA) who is under the supervision of the physician performing the abortion.

E. If general anesthesia is administered, the outpatient abortion facility shall ensure that professional staff, trained and deemed competent to provide post-anesthesia care, shall be present on-site to meet the needs of the patient.

F. If general anesthesia is administered, the outpatient abortion facility shall ensure that emergency medical equipment related to the delivery of general anesthesia shall be available on the premises.

G. A physician shall be present on the licensed premises during the post-anesthesia recovery period until the patient is fully reacted and stable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

#### **Subchapter D. Physical Environment**

##### **§4445. General Requirements**

###### A. General Provisions

1. The outpatient abortion facility shall be designed, constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public at all times.

2. The outpatient abortion facility shall meet the provisions for physical environment under this Section, unless otherwise noted herein.

3. For the purposes of this Section, major renovations are defined as such renovations that affect the alteration to the functionality or original design of the

facility's construction. Painting walls, re-tiling floors, installation of carpet, repairing roof damage or reroofing are not considered to be major renovations for purposes of this Section.

4. A separate waiting area shall be provided that is sufficient in size to provide seating space for patients, staff, and visitors of the patient.

5. Toilet facilities for patients, staff, and visitors shall be installed and maintained in accordance with the requirements of the Louisiana State Sanitary Code.

a. Every toilet room shall contain at least one water closet and one lavatory. Such toilet facilities shall be provided with ventilation in accordance with the requirements of the Louisiana State Sanitary Code.

b. Hot and cold water delivered through a mixing faucet, soap, and mechanical hand drying devices and/or disposable paper towels shall be provided at all hand washing lavatories/stations.

c. Showers or shower/tub combinations, if provided, shall meet the requirements of the Louisiana State Sanitary Code.

6. Additional General Provisions. For outpatient abortion facilities that receive their initial outpatient abortion license after the effective date of the promulgation of

this Rule, receive plan review approval for major renovations after the effective date of the promulgation of this Rule or change their geographical address after the effective date of the promulgation of this Rule, the following additional general provisions shall apply:

a. flooring in all patient areas shall be readily cleanable, monolithic and joint free, and slip-resistant;

b. wall finishes in all patient areas shall be smooth, moisture resistant, washable, and free of fissures, open joints, or crevices that may retain or permit passage of dirt particles; and

c. wall bases in all patient areas shall be monolithic and coved with the floor, tightly sealed to the wall, and constructed without voids.

B. Signage. The outpatient abortion facility shall provide:

1. An exterior sign that can be viewed by the public. The sign shall contain, at a minimum, the doing business as name of the facility as it appears on the outpatient abortion facility license issued by the department.

2. Clearly identifiable and distinguishable signs for outpatient abortion facilities operating within another

facility which shall comply with the provisions of applicable state laws, rules, and regulations.

C. Procedure Room

1. Abortion procedures shall be performed in a segregated procedure room, removed from general traffic lines with a minimum clear floor area of 120 square feet, exclusive of vestibule, toilets or closets.

2. There shall be a hand-washing station within each procedure room and within each post-anesthesia recovery area. Fixtures shall not encroach upon any required egress path or other required clear dimension.

D. Post-Anesthesia Recovery Area

1. The outpatient abortion facility shall have a separate post-anesthesia recovery area with a minimum clear recovery area with a minimum clear area of 2 feet, 6 inches around the three sides of each stretcher or lounge chair for work and circulation.

2. The outpatient abortion facility shall have a nurse's station equipped with a countertop, space for supplies, provisions for charting, and a communication system. The nursing station shall be arranged to provide for direct visual observation of all traffic into the recovery area.

E. Equipment and Supply Storage Area. For outpatient abortion facilities that receive their initial outpatient

abortion license after the effective date of the promulgation of this Rule, receive plan review approval for major renovations after the effective date of the promulgation of this Rule, or change their geographical address after the effective date of the promulgation of this Rule, the outpatient abortion facility shall have:

1. a soiled utility room which contains a utility sink, a work counter, a hand washing station, waste receptacle(s), and a space for soiled linen or equipment;
  - a. A designated separate space shall be provided for soiled materials storage.
  - b. Soiled materials shall not be stored or transported through the clean laundry area.
2. a clean utility room which is used for clean or sterile supplies;
3. an equipment and supply storage room with sufficient floor space for equipment and supplies used in the procedure room which shall not encroach upon any required egress path or other required clear dimension;
4. at least one stretcher and one wheelchair for patient use; and
5. sufficient pathway to accommodate the usage of a stretcher and a wheelchair.

F. If the outpatient abortion facility maintains an in-house laundry, the areas shall be designed in accordance with infection control standards and the *Louisiana Sanitary Code*, as applicable.

G. Forced Abortion Prevention Signage. Each outpatient abortion facility shall ensure a sign is obtained from the department in accordance with the Forced Abortion Prevention Sign Act.

1. Display. The sign shall be posted on the licensed premises and shall be clearly visible to patients. The sign provided shall be conspicuously posted in each patient admission area, waiting room, and patient consultation room used by patients on whom abortions are performed, induced, prescribed for, or who are provided with the means for an abortion.

H. National Human Trafficking Resource Center Hotline. Each outpatient abortion facility shall post information regarding the National Human Trafficking Resource Center Hotline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4447. Infection Control**

A. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review its written infection control program. The purpose of this program shall seek to minimize infections and communicable diseases through prevention, investigation, and reporting of infections. This program shall include all contracted services.

B. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review, with the approval of the medical director, written policies and procedures for preventing, identifying, reporting, investigating, controlling, and immediately implementing corrective actions relative to infections and communicable diseases of patients and personnel. At a minimum, the policies shall address:

1. alcohol based hand rub and hand hygiene;
2. use of all types of gloves;
3. decontamination of equipment between each patient use, including, but not limited to, chairs and procedure room tables;
4. linen cleaning, if applicable;
5. waste management including, but not limited to, the requirements of Part XXVII of the Louisiana State *Sanitary Code*;
6. environmental cleaning;

7. reporting, investigating, and monitoring of surgical infections;

8. sterilization procedures and processes, if applicable;

9. single use devices;

10. disinfecting procedures and processes; and

11. breaches of infection control practices.

C. Supplies shall not be reused if labeled for single use.

D. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures which require immediate reporting of the suspected or confirmed diagnosis of a communicable disease pursuant to applicable federal, state and local rules, laws, regulations and ordinance.

E. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review a written waste management program that identifies and controls wastes and hazardous materials to prevent contamination and spread of infection within the facility. The program shall comply with all applicable laws and regulations governing wastes and hazardous materials and the safe handling of these materials.

F. There shall be a separate sink for cleaning instruments and disposal of liquid waste.

G. The outpatient abortion facility shall develop, implement, and enforce/maintain written policies and procedures to ensure items are contained and handled during the sterilization process to assure sterility is not compromised prior to use.

H. After sterilization, instruments shall be stored in a designated clean area so that sterility is not compromised.

I. Sterile packages shall be inspected for integrity and compromised packages shall be reprocessed before use in accordance with manufacturer's recommendations.

J. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures governing the following:

1. the handling, processing, storing, and transporting of clean and dirty laundry;
2. special cleaning and decontamination processes are employed for contaminated linens, if an in-house laundry is maintained on the licensed premises; and
3. housekeeping services maintain a safe and clean environment.

K. Housekeeping supplies shall be provided to adequately maintain the licensed premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4449. Laboratory Services**

A. The outpatient abortion facility shall have laboratory services available to meet the needs of its patients.

B. The outpatient abortion facility shall maintain a Clinical Laboratory Improvement Amendment (CLIA) certificate for the laboratory services provided on the licensed premises.

C. The outpatient abortion facility shall ensure that all contracted laboratory services are provided by a CLIA certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4451. Pharmaceutical Services**

A. All outpatient abortion facilities shall have a Controlled Dangerous Substance (CDS) license issued by the Louisiana Board of Pharmacy and a Drug Enforcement Agency (DEA) registration in accordance with applicable state and federal laws.

B. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures that govern the safe storage,

prescribing, dispensing, preparing and administering of drugs and biologicals on the licensed premises.

C. Storage Areas. The outpatient abortion facility shall provide a designated secure storage area for storing drugs and biologicals.

1. The designated storage area shall be constructed and maintained to prevent unauthorized access.

2. The designated storage area shall adhere to the manufacturer's suggested recommendations for storage of drugs.

3. Locked areas that are used to store medications including controlled substances, shall conform to all applicable federal and state laws, and the outpatient abortion facility's policies and procedures.

D. The outpatient abortion facility shall maintain written records documenting the ordering, receiving, dispensing, and administering of drugs.

E. The outpatient abortion facility shall maintain written records documenting the disposing of unused drugs.

F. The outpatient abortion facility shall maintain written documentation of all drugs prescribed and/or dispensed to each patient, including, but not limited to the:

1. full name of the patient;
2. name of the prescribing and/or dispensing physician;

3. name and strength of the drug;
4. quantity prescribed and/or dispensed; and
5. date of issue.

G. Preparation and Administration of Drugs. The outpatient abortion facility shall develop, implement, enforce, monitor, and review annually written policies and procedures governing the preparation of drugs and biologicals.

1. The outpatient abortion facility shall ensure that all drugs and biologicals are prepared and administered pursuant to an order from an individual, employed or under contractual agreement, who has prescriptive authority in accordance with applicable state laws. Each order shall be in writing, patient specific, dated, timed, and signed by that individual. A copy of such orders shall be maintained in each, individual patient medical record.

H. The outpatient abortion facility shall order and maintain a supply of emergency drugs for stabilizing and/or treating medical and surgical complications on the licensed premises as authorized by the medical director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

**§4453. Inactivation of License due to a Declared Disaster or Emergency**

A. An outpatient abortion facility located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with applicable state laws, may seek to inactivate its license for a period not to exceed one year, provided that the facility:

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 facility 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 applicable state law;

b. the facility intends to resume operation as an outpatient abortion facility 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; and

d. includes an attestation that all clients have been discharged or transferred to another facility in accordance with the provisions of this Chapter.

2. resumes operating as an outpatient abortion facility in the same service area within one year of the

issuance of an executive order or proclamation of emergency or disaster in accordance with state law;

3. continues to pay all fees and costs 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 an outpatient abortion facility license, the department shall issue a notice of inactivation of license to the facility.

C. In order to obtain license reinstatement, an outpatient abortion facility 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. The written request shall include:

a. the anticipated date of opening, and a request to schedule a licensing survey;

b. a completed licensing application, plan review approval, if applicable, and other required documents with licensing fees, if applicable; and

c. written approvals for occupancy from OSFM/Live Safety Code and OPH recommendation for license.

D. Upon receiving a completed written request to reinstate an outpatient abortion facility license and other required documentation, the department shall conduct a licensing survey.

E. If the facility meets the requirements for licensure and the requirements under this Section, the department shall issue a notice of reinstatement of the facility's license.

F. During the period of inactivation, the department prohibits a change of ownership (CHOW) in the outpatient abortion facility.

G. The provisions of this Section shall not apply to an outpatient abortion facility 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 facility's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

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

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 a positive impact on family functioning,

stability or autonomy as described in R.S. 49:972 by ensuring that outpatient abortion facilities protect the health and safety of the patients receiving services.

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 may have an adverse impact on small businesses, as described in R.S. 49:965.2 et seq, if the requirements of these licensing changes increases the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

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.

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 may have an impact on the staffing level requirements or qualifications required to provide the same level of service and may result in nominal direct or indirect cost to the provider to provide the same level of service. These provisions may also negatively impact the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 29, 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. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary

Bobby Jindal  
GOVERNOR



Kathy H. Kliebert  
SECRETARY

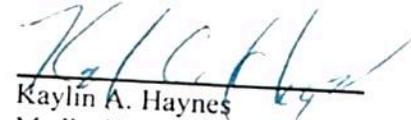
**State of Louisiana**  
Department of Health and Hospitals  
Bureau of Health Services Financing

**PUBLIC HEARING CERTIFICATION**  
January 29, 2015  
9:30 a.m.

RE: Abortion Facilities – Licensing Standards  
Docket # 012915-01  
Department of Health and Hospitals  
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on January 29, 2015 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

  
\_\_\_\_\_  
Kaylin A. Haynes  
Medicaid Policy and  
Compliance

01/29/15

Date

# DHH/BHSF PUBLIC HEARING

**Topic** – Abortion Facilities – Licensing Standards  
**Date** – January 29, 2015

## PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	628 N 4th Street Baton Rouge LA 70802	225-342-3881	DHH
2.	"		
3. Kwan H Barnes	"	225-342-1938	DHA
4. Steve Budguntan	"	225-342-3881	DHH - Medicaid Policy
5. Maya Lau	222 Lakeside Shreveport LA 71111	318-584-5134	Shreveport Times
6. Julie Sebastian Harris	1208 Pine St New Orleans LA 70118	504-865-9569	CITIZEN
Holley Galland Haymaker	254 Nelson Dr BR 70808	225-892-0951	CITIZEN Haymaker

# DHH/BHSF PUBLIC HEARING

## Topic – Abortion Facilities – Licensing Standards

Date – January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
7. <i>GLENN + JILLIS</i>	<i>5529 Stevens Bldg Rt 71816</i>		<i>Planned Parenthood</i>
8. <i>M. Cath FALCHER</i>	<i>PO BOX 30654 New Orleans, LA 70189</i>	<i>(985) 2285 2115</i>	<i>Louisiana local. on for Reproductive Freedom</i>
9. <i>Winter Kendall</i>	<i>2444 N Rampart St New Orleans, LA</i>	<i>(504) 535 1101</i>	<i>Shutwalk New Orleans Wante women org</i>
10. <i>Rachel Tistet</i>	<i>829 Mystic Ave Terrebonne LA 70056</i>	<i>504-722-0992</i>	<i>Shut walk New Orleans</i>
11. <i>Elizabeth Johnson</i>	<i>470 Ogilve Drive New Orleans LA 70302</i>	<i>650 921 5827</i>	<i>Medical student for choice</i>
12. <i>Alice Chapman</i>	<i>534A Camp St. New Orleans, LA 70115</i>	<i>434-409-2255</i>	<i>Med Students for Choice</i>

# DHH/BHSF PUBLIC HEARING

**Topic** – Abortion Facilities – Licensing Standards  
**Date** – January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
13. Emma Tuttleman Kreyger	7408 Fieret St New Orleans LA 70118	(858) 735 4016	SURJ Tulane NOAF
14. Emma Johnson	2414 State St. New Orleans, LA 70118	435-714-9824	SURJ Tulane
15. Alexandra Moody	2224 Calhoun St New Orleans, LA 70118	781-690 3733	SURJ Tulane
16. Haley Riemer	#317 31 McAlister Dr New Orleans, LA 70118	251-382-6638	SURJ Tulane
17. MATTHEW SWOPE	4608 RAINBOWS ST. NOUA 70118	504 442-9271	—
18. Adrian Van Dyke	8714 Arroyo St. Molde 70118	619-542-8557	—

# DHH/BHSF PUBLIC HEARING

## Topic - Abortion Facilities - Licensing Standards Date - January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
19. Frances Mearns	3516 Barko St. New Orleans	248-854-1347	Federations
20. Maria Cuevas	3894 JEAN LAFFITE LAFFITE LA 70067	504-895-0990	Durbin / Midtown Medical
21. Ellie Schilling	909 Poydras Street New Orleans LA	504-680-6058	Attorney / <del>LLP</del>
22. CHARLE WOOTEN	650 N. LITTLE SP BFLA 70802	225-364-2107	LOUISIANA PRESS
23. Elizabeth Grossman	6624 Shred St. New Orleans, LA 701125	504-358-1825	* NOK F
24. Gayle J. Gural	6346 Balle Grom 1708220	714-7-2597	P. Dennis Parental Hook

# DHH/BHSF PUBLIC HEARING

**Topic** – Abortion Facilities – Licensing Standards  
**Date** – January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
25. Sandy Cunningham	305 Anthony Ave Ashe Springs	918-516-4115	LA Right to Life
26. Darrin Hughes	6308 Beechwood Dr Baton Rouge, LA	(504) 246-7154	
27. Melissa James	6457 Bertha Ave Bossier, LA 70719	325-532-9771	Citizen
29. Ashley Lewis	4040 N. MYST AVE	225-240-892	DHJ
30.			

# DHH/BHSF PUBLIC HEARING

**Topic -** Abortion Facilities - Licensing Standards

**Date -** January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Robin Barber	4018 Magazine St NOLA 70115	(504) 809-7679	Planned Parenthood
2. Keanna Gregory	121 N Muret St. NOLA 70119	770-547-0513	Planned Parenthood
4. Darcy Peake	8414 Apricot St NOLA 70118	347-218-0285	Unitarian Universalists
5. Paula Blankens	DH + - NCS	342-2471	HSS
6.			

# DHH/BHSF PUBLIC HEARING

**Topic** – Abortion Facilities – Licensing Standards  
**Date** – January 29, 2015

## PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	628 N 4th Street Baton Rouge LA 70822	335-342-3881	DHH
2.			
3. Kathleen Piler	410 Kings Hwy Shreveport	714-515-2215	AMG
4. Jennifer Brichs	118 Silverwood Dr 70461	504/717 3967	Planned Parenthood
5. Kaitie Caldwell	210 Kings Hwy Shreveport	318-221-5500	Enmore Leisner
5. Angela Adkins	1420 Richardsen Gr. Spr., La. 70734	225-324-0094	Baton Rouge Chapter National Org. for Women
6. Katherine Shunk	1835 S. Brightside Vivian Dr. #1D BR, LA 70820	786-877-2623	NOW - BR

# DHH/BHSF PUBLIC HEARING

## Topic – Abortion Facilities – Licensing Standards

Date – January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
7. TEA SEFER	1660 L St NW Washington DC 20036	202 667 5881	National Abortion Federation
8. Adrienne Nicere	2246 Estates Rd. Baton Rouge, LA 70808	225-346-0251	Planned Parenthood
9. Jennifer Stevens	608 N. 4th St BR, LA 70802	225-340-9318	DHH
10. Roxanne Unge	2725 Constance St. New Orleans, LA 70130	210-883-6026	Med Students for Choice
11. Bridget Alvarado	7309 Sycamore St. New Orleans, LA 70118	909-936-0452	Med Students for Choice
12. Julie Finke	3211 Dresa St NOVA 70119	504.982.5891	PHYSICIANS.

# DHH/BHSF PUBLIC HEARING

**Topic** – Abortion Facilities – Licensing Standards  
**Date** – January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
13. Elizabeth Laurin	1325 Josephine St. NO LA, 70130	501 952 8368	Med students for choice
14. Elena Tennant	2135 Jefferson Ave New Orleans, LA 70115	(777) 227-6269	Students United for Reproductive Justice @ Tulane
15. Samuel Fishman	1741 Burke St New Orleans, LA	443-791-8081	Students United for Reproductive Justice
16. Jeanne Barnard	205 Leonard St Thibodaux LA	985-859-0695	Reproductive Justice Group - 1st W. N.
17. Gabriella Bluest-Mills	4415 S Liberty St New Orleans LA	504-371-2923	Redistrict
18. Raegan Carter	P.O. Box 1709 Beth Rye, LA 7081	225-209-8709	Planned Parenthood

# DHH/BHSF PUBLIC HEARING

**Topic** – Abortion Facilities – Licensing Standards

**Date** – January 29, 2015

Name	Address	Telephone Number	AGENCY or GROUP you represent
19. Heidi Sincer	8912 Fox Run Ave BRLA 70808	(225) 810-6770	Doctors for America, LA
20. Amy Irvin	8925 Oak St NOLA, 70118	<del>---</del>	NOLA
21.			
22.			
23.			
24.			

## SUMMARY OF PUBLIC HEARING TESTIMONY

**Proposed Rule:** Abortion Facilities Licensing Standards Notice of Intent  
**Public Hearing Date:** January 29, 2015  
**Docket No. :** 012915-01  
**Conducted By:** Department of Health and Hospitals, Bureau of Health Services Financing Staff

Oral Testimony Given By	Organization Represented	Summary of Comments
Ellie Shilling	Attorney, New Orleans, Representing Several Organizations	The new regulations pose significant legal problems that severely overburden abortion providers and over-regulate them. Feels the requirements are very difficult and make it impossible for facilities to comply because of the level of documentation required and the varied provisions. Feels provisions will allow clinics to be easily cited for deficiencies and cause their licenses to be easily revoked. Urge revisions and eliminate over regulating of these facilities.
Julie Finger	Pediatrician of Adolescent Medicine	Opposes regulations and feel the regulations are medically unsound and unjust, and feel they place an onerous burden on clinics for documentation and place severe restrictions on the abortion clinics. Clinics are already subject to a myriad of other regulations and regulatory groups. Practices will be unable to operate with these types of regulations. Want the proposed regulations revised.
Darcy Roake	Unitarian Universalists Reproductive Justice Task Force	Opposes regulations and feel they are unjust and unfairly target the providers of legal, elected surgeries. The regulations are not compassionate. The regulations are dictating the reproductive choices of women. The regulations inhibit self-determination of all women and are not just.
Amy Irvin	Co-Founder New Orleans Abortion Fund	Call on the Department to rescind the regulations. Due to the consequences of the regulations, abortion clinics will be closed. Women and families will have fewer primary health care options for pre-natal and reproductive care. The more restrictions a State has on abortions negatively impact women and economic status. Even more women will go into poverty if these regulations go into effect.
Tea Sefer	State Organizing Associate, National Abortion Federation	There is no scientific evidence to support targeting abortion providers with extensive medically unnecessary regulations like these proposed standards. They are overly burdensome & unnecessary and are designed to shut down safe abortion practices. Concerned about the patient confidentiality regulations in these provisions—don't protect patient confidentiality.
Elizabeth Johnson	Leader, Medical Students for Choice	Opposes the proposed standards because they are medically unnecessary and interfere with clinics that already provide safe abortion services. The proposed regulations contain many restrictions that prevent the clinics from operating and these requirements are not imposed on other medical facilities in the State. They don't offer strict standards for patient confidentiality.
Alice Chapman	Leader, Medical Students for Choice	Reading statement from a physician, Dr. Raman. Opposes the regulations. The proposed regulations are politically motivated and a targeted attack against abortion facilities. They are intended to be burdensome and punitive to clinics. This is a form of back-door regulations to harm these clinics.

Raegan Carter	Senior Director, Planned Parenthood Gulf Coast	Regulations are excessive, medically unnecessary and do not protect women's confidentiality and will prevent women from receiving safe and legal abortions. Abortion providers are already highly restricted in Louisiana so these regulations are not necessary. Urges the Department to treat abortion providers with the same respect as other health care providers.
Micah Fincher	Concerned Citizen, Louisiana Coalition for Reproductive Freedom	Referenced a specific provision in the regulations relative to a facility's license being revoked and protested time limits on provided comments.
Emma Tuttleman Kriegler	Students United for Reproductive Justice (SURJ) Tulane NOAF	Opposes the regulations and as a student has determined that she will not remain in the State to pursue a career. The State will lose future students if they go through with these regulations.
Gayle Joseph	Concerned Citizen, Planned Parenthood	Enforcing these regulations which restricts females from securing safe procedures will lead to unsafe abortion procedures. It is important to have facilities that can provide safe abortions so these restrictions are not good.

## SUMMARY OF WRITTEN COMMENTS

**Proposed Rule:** Abortion Facilities Licensing Standards Notice of Intent  
**Public Hearing Date:** January 29, 2015  
**Docket No. :** 012915-01  
**Conducted By:** Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments
Hundreds of Individual Emails and Form Letter Type Emails	Medicaid Policy Email Account	Opposes the proposed regulations. The regulations are politically motivated restrictions that will prevent women from receiving access to safe, legal abortions, and are written to ultimately make abortions impossible to access. The regulations are onerous and burdensome and aimed at closing safe abortion facilities by putting regulations in place that facilities cannot adhere to. The restrictions are impossible to meet and facilities will not maintain their licenses.
Thousands of Written Comment Letters and Form Letters	Hard copies received from Ellie Shilling on behalf of Abortion Advocates and Electronic Letters	Opposes the proposed regulations. They are overly burdensome and unnecessary, politically motivated regulations which are aimed at being burdensome and punitive to clinics and the women they serve. The regulations are a targeted attack on abortion facilities. Urges the Department to stop the regulations.
Signatures on Petitions from Concerned Citizens	Hard copies received from Ellie Shilling on behalf of Abortion Advocates	Opposes the proposed regulations.

## DECEMBER 20, 2014 NOTICE OF INTENT: ABORTION FACILITIES – LICENSING STANDARDS

This website posting is in response to correspondence received regarding the **Abortion Facilities - Licensing Standards** Notice of Intent which was published in the December 20, 2014 edition of the *Louisiana Register*.

Since 2010, the Louisiana Legislature has enacted several Acts which amended the laws governing abortion services and the Louisiana Children's Code. The Abortion Facilities - Licensing Standards Notice of Intent proposes to repeal and replace the provisions governing the licensing standards for abortion facilities in order to incorporate the changes imposed by legislation, and to further revise and clarify these provisions.

Numerous public comments were received regarding this proposed Rule. The Department will take these comments into consideration as we move forward with the administrative rulemaking process to establish clear and concise provisions governing the licensing standards for abortion facilities.

The Department would like to thank all who took the time to provide comments and hope that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Published on the Department's website at:

<http://new.dhh.louisiana.gov/assets/medicaid/Rulemaking/Misc/AbortLic-AgencyResponseWebFINAL02-06-15.pdf>