

- b. data forms;
 - c. a recipient's record;
 - d. any matter under investigation by the department;
- or
- e. certification/recertification;
16. use of false, fraudulent or misleading advertising;
 17. failure to disclose a conviction for a criminal offense by a person with ownership or controlling interest in the provider agency, or by a person who is an agent or managing employee of the MST provider; or
 18. failure to provide optimum care in accordance with current standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2759 (December 2009).

§52903. Applicable Sanctions

A. The following sanctions may be applied to any MST provider, independently, consecutively and/or collectively. These sanctions may be imposed in addition to those sanctions cited in the Surveillance and Utilization Review Systems (SURS) Rule, LAC 50:I.Chapter 41 (*Louisiana Register*, Volume 29, Number 4).

1. The MST provider may be terminated as an MST provider. Terminated agencies, including all of their owners, officers or directors, will not be allowed to reapply for enrollment as a Medicaid MST provider for a period of up to five years.

2. Payments for services rendered may be suspended or withheld until program compliance is verified.

3. The MST provider's current recipients shall be transferred to another MST provider if the bureau determines that recipient health and safety are compromised. Recipients have freedom of choice regarding the selection of service providers.

4. The MST provider and/or the staff may be required to complete education and training in all aspects of MST policy and billing procedures, including training relevant to providing quality MST services.

5. Individuals employed by the provider may be suspended or excluded from providing MST services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2760 (December 2009).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Alan Levine
Secretary

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RULE

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

Pediatric Day Health Care Facilities

Minimum Licensing Standards
(LAC 48:I.Chapter 52)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 48:I.Chapter 52 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:40:2193-2193.4. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

**Chapter 52. Pediatric Day Health Care Facilities
Licensing Standards**

Subchapter A. General Provisions

§5201. Introduction

A. A pediatric day health care (PDHC) facility serves medically fragile individuals under the age of 21, including technology dependent children who require close supervision. These facilities offer an alternative health care choice to receiving in-home nursing care. A PDHC facility may operate seven days per week and may provide up to 12 hours of services per day per individual served.

B. The care and services to be provided by the PDHC facility shall include, but is not limited to:

1. nursing care, including but not limited to tracheotomy and suctioning care, medication management, IV therapy, and gastrostomy care;
2. respiratory care;
3. physical, speech, and occupational therapies;
4. assistance with activities of daily living;
5. transportation services;
6. socialization; and
7. education and training.

C. In addition to the provision of care and services, the PDHC facility shall also function as an emergency shelter as provided in these licensing regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5203. Definitions

Administrator—the person who is in charge of the daily operation of the PDHC facility.

Department or DHH—the Louisiana Department of Health and Hospitals.

Child—a medically fragile individual under the age of 21 who receives services from a PDHC facility, including a technology dependent child who requires close supervision.

Licensee—the person, partnership, company, corporation, association, organization, professional entity, or other entity to whom a license is granted by the licensing agency and upon whom rests the ultimate responsibility and authority for the conduct of and services provided by the PDHC facility.

Medically Fragile—an individual who has a medically complex condition characterized by multiple, significant medical problems that require extended care.

Parent—parent(s) or guardian with legal custody of the child.

Pediatric Day Health Care (PDHC) Facility—a facility that serves medically fragile individuals under the age of 21, including technology dependent children who require close supervision.

Pediatric Nursing Experience—being responsible for the care of acutely ill or chronically ill children.

Plan of Care—the comprehensive plan developed by the PDHC facility for each child receiving services for implementation of medical, nursing, psychosocial, developmental, and educational therapies.

Prescribing Physician—a physician, currently licensed to practice medicine in Louisiana, who:

1. signs the order admitting the child to the PDHC facility;
2. maintains overall responsibility for the child's medical management; and
3. is available for consultation and collaboration with the pediatric day health care staff.

Secretary—the secretary of the Louisiana Department of Health and Hospitals, or his designee.

Technology Dependent Child—a child who has a chronic disability that requires specific nursing interventions to compensate for the deficit of a life sustaining body function. The child requires daily, ongoing, intermittent care or monitoring by health care professionals or other trained personnel as prescribed by a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter B. Licensing Procedures

§5205. General Provisions

A. All pediatric day health care facilities must be licensed by the department. A PDHC facility shall not be established, opened, operated, managed, maintained, or conducted in this state without a current valid license issued by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for PDHC Facilities in the state of Louisiana. It shall be unlawful to operate a PDHC facility without possessing a current, valid license by DHH. Each PDHC facility shall be separately licensed.

B. A parent or legal guardian or legally responsible person providing care to a medically fragile child in his/her home or any other extended care or long term care facility is not considered to be a PDHC facility and shall not be licensed as a PDHC facility.

C. A PDHC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the facility to which it is issued and only for the specific geographic address of that facility;

3. be valid for one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that date, or unless a provisional license is issued;

4. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the PDHC 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.

D. In order for the PDHC facility to be considered operational and retain licensed status, the facility shall meet the following conditions.

1. The PDHC facility shall always have at least two employees, one of whom is an RN, on duty at the facility location during operational hours.

2. There shall be staff employed and available to be assigned to provide care and services to each child during all operational hours. Services rendered shall be consistent with the medical needs of each child.

3. The PDHC facility shall have provided services to at least two children in the preceding 12 month period in order to be eligible to renew its license.

E. The licensed PDHC facility shall abide by and adhere to any state law, rules, policy, procedure, manual, or memorandums pertaining to such facilities.

F. A separately licensed PDHC facility shall not use a name which is substantially the same as the name of another such facility licensed by the department, unless such PDHC facility is under common ownership with other PDHC facilities.

G. No branches, satellite locations or offsite campuses shall be authorized for a PDHC facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5207. Initial Licensing Application Process

A. An initial application for licensing as a PDHC facility shall be obtained from the department. A completed initial license application packet for a PDHC facility must be submitted to and approved by the department prior to an applicant providing PDHC facility services. An applicant must submit a completed initial licensing packet to the department, which shall include:

1. a completed PDHC facility licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural facility plans from the DHH Department of Engineering and Architectural Services and the Office of the State Fire Marshal (OSFM);

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health (OPH);

5. a copy of statewide criminal background checks on all individual owners with a 5 percent or more ownership interest in the PDHC facility entity, and on all members of the PDHC facility's board of directors, if applicable, and administrators;

6. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

7. if applicable, Clinical Laboratory Improvement Amendments (CLIA) certificate or CLIA certificate of waiver;

8. a completed disclosure of ownership and control information form;

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

10. the days and hours of operation; and

11. any other documentation or information required by the Department for licensure.

B. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a PDHC facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

C. Once the initial licensing application packet has been approved by the department, notification of the approval shall be forwarded to the applicant. Within 90 days of receipt of the approval notification, the applicant must notify the department that the PDHC facility is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application has been closed, an applicant who is still interested in becoming a PDHC facility must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5209. Types of Licenses

A. The Department shall have the authority to issue the following types of licenses:

1. Full Initial License. The department shall issue a full license to the facility when the initial licensing survey finds that the PDHC facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

2. Provisional Initial License. The department may issue a provisional initial license to the facility when the initial licensing survey finds that the PDHC facility is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety

or welfare of the children or participants. The provisional license shall be valid for a period not to exceed six months.

a. At the discretion of the department, the provisional initial license may be extended for an additional period not to exceed 90 days in order for the PDHC facility to correct the noncompliance or deficiencies.

b. The facility must submit a plan of correction to the department for approval and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional initial license.

c. A follow-up survey shall be conducted prior to the expiration of the provisional initial license.

i. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, a full license will be issued.

ii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional initial license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed PDHC facility which is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional Renewal License. The department, in its sole discretion, may issue a provisional license to an existing licensed PDHC facility for a period not to exceed six months.

a. At the discretion of the department, the provisional renewal license may be extended for an additional period not to exceed 90 days in order for the PDHC facility to correct the noncompliance or deficiencies.

b. A provisional renewal license may be issued for the following reasons:

i. the existing PDHC facility has more than five deficient practices or deficiencies cited during any one survey;

ii. the existing licensed PDHC facility has more than three validated complaints in a one year period;

iii. the existing PDHC facility has been issued a deficiency that involved placing a child or participant at risk for serious harm or death;

iv. the existing PDHC facility has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey; or

v. the existing pediatric day health care provider is not in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

c. When the department issues a provisional renewal license to an existing licensed pediatric day health care provider, the department shall conduct an on-site follow-up survey at the pediatric day health care facility prior to the expiration of the provisional license.

i. If the on-site follow-up survey determines that the PDHC facility has corrected the deficient practices 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 PDHC facility license.

ii. If the on-site follow-up survey determines that the PDHC facility has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional renewal license shall expire and the facility shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee, if no timely informal reconsideration or administrative appeal is filed pursuant to this Chapter.

B. If an existing licensed PDHC facility has been issued a notice of license revocation, suspension, or termination, and the facility's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

1. If a timely administrative appeal has been filed by the provider regarding the license revocation, suspension, or termination, the administrative appeal shall be suspensive and the facility shall be allowed to continue to operate and provide services until such time as the department's Bureau of Appeals issues a decision on the license revocation, suspension, or termination.

2. If the secretary of the department determines that the violations of the PDHC facility pose an imminent or immediate threat to the health, welfare, or safety of a child, the imposition of such action may be immediate and may be enforced during the pendency of the administrative appeal. The PDHC facility shall be notified of this determination in writing.

3. The denial of the license renewal application shall not affect in any manner the license revocation, suspension, or termination.

C. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the facility.

D. The license for a PDHC facility shall be valid for one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that time.

E. The initial pediatric day health care license shall specify the capacity of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5211. Licensing Surveys

A. Prior to the initial license being issued to the PDHC facility, an initial licensing survey shall be conducted on-site at the facility to assure compliance with licensing standards. The facility shall not provide services to any child until the initial licensing survey has been performed and the facility found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

B. Once an initial license has been issued, the department shall conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations, and fees. These surveys shall be unannounced.

C. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices.

1. A new provider that is issued a provisional initial license or an existing provider that is issued a provisional renewal license shall be required to correct all noncompliance or deficiencies at the time the follow-up survey is conducted.

2. The department shall issue written notice to the provider of the results of the follow-up survey.

D. An acceptable plan of correction may be required for any survey where deficiencies have been cited.

E. If deficiencies have been cited during a licensing survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. civil monetary penalties;
2. directed plans of correction; and
3. license revocations.

F. DHH surveyors and staff shall be:

1. given access to all areas of the facility and all relevant files during any licensing survey or other survey; and

2. allowed to interview any provider staff, child or participant as necessary to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5213. Changes in Licensee Information or Personnel

A. A PDHC facility license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any change regarding the PDHC facility name, "doing business as" name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the occurrence. Any change regarding the PDHC facility name or "doing business as" name requires a change to the facility license and shall require a \$25 fee for the reissuance of an amended license.

C. Any change regarding the facility's key administrative personnel shall be reported in writing to the department within five days of the change.

1. Key administrative personnel include the:

- a. administrator;
- b. medical director; and
- c. director of nursing.

2. The facility's notice to the department shall include the individual's:

- a. name;
- b. address;
- c. hire date; and
- d. qualifications.

D. A change of ownership (CHOW) of the PDHC facility shall be reported in writing to the department within five days of the change of ownership.

1. The license of a PDHC facility is not transferable or assignable. The license of a PDHC facility cannot be sold.

2. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

3. A PDHC facility that is under license suspension, revocation, or termination may not undergo a CHOW.

E. Any request for a duplicate license must be accompanied by a \$25 fee.

F. A PDHC facility that intends to change the physical address of its geographic location is required to have plan review approval, Office of State Fire Marshall approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation the facility.

1. Written notice of intent to relocate must be submitted to the licensing section of the department when plan review request is submitted to the department for approval.

2. Relocation of the facility's physical address results in a new anniversary date and the full licensing fee must be paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5215. Cessation of Business

A. A facility that intends to close or cease operations shall comply with the following procedures:

1. give 30 days advance written notice to:
 - a. the department;
 - b. the prescribing physician; and
 - c. the parent(s) or legal guardian or legal representative;
2. notify the department of the location where the records will be stored and the contact person for the records; and
3. provide for an orderly discharge and transition of all children admitted to the facility.

B. If a PDHC facility fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a PDHC facility for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5217. Renewal of License

A. License Renewal Application. A PDHC facility must submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. the days and hours of operation;
3. a copy of the current on-site inspection report with approval for occupancy from the:
 - a. Office of the State Fire Marshal; and
 - b. Office of Public Health;
4. proof of financial viability, comprised of the following:
 - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
 - b. general and professional liability insurance of at least \$300,000; and
 - c. worker's compensation insurance;

5. the license renewal fee; and

6. any other documentation required by the department.

B. The department may perform an on-site survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the pediatric day health care license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5219. Denial of License, Revocation of License, Denial of License Renewal

A. In accordance with the provisions of the Administrative Procedure Act, the department may:

1. deny an application for a license;
2. deny a license renewal; or
3. revoke a license.

B. Denial of an Initial License

1. The department shall deny an initial license when the initial licensing survey finds that the PDHC facility is noncompliant with any licensing laws or regulations or with any other required statutes, laws, ordinances, rules or regulations and such noncompliance presents a potential threat to the health, safety, or welfare of the children who will be served by the facility.

2. The department may deny an initial license for any of the reasons in this Chapter that a license may be revoked or non-renewed.

C. Voluntary Non-Renewal of a License

1. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

2. If a provider fails to timely renew its license, the facility shall immediately cease providing services, unless the provider is actively treating children, in which case the provider shall:

a. immediately provide written notice to the department of the number of children receiving treatment at this PDHC facility;

b. immediately provide written notice to the prescribing physician and to the child, parent, legal guardian, or legal representative of the following:

- i. voluntary non-renewal of license;
- ii. date of closure; and
- iii. plans for orderly transition of the child;

c. discharge and transition of each child within 15 days of voluntary non-renewal; and

d. notify the department of the location where records will be stored and the contact person for the records.

3. If a PDHC facility fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a PDHC facility for a period of two years.

D. Revocation of License or Denial of License Renewal. A PDHC facility license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the PDHC facility licensing laws, rules and regulations, or with other required statutes, laws, ordinances, rules, or regulations;

2. failure to comply with the terms and provisions of a settlement agreement or education letter with or from the department, the Attorney General's Office, any regulatory agency, or any law enforcement agency;

3. failure to uphold child rights whereby deficient practices result in harm, injury, or death of a child;

4. negligence or failure to protect a child from a harmful act of an employee or other child including, but not limited to:

a. mental or physical abuse, neglect, exploitation, or extortion;

b. any action posing a threat to a child's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

f. criminal activity;

5. failure to notify the proper authorities, as required by federal or state law, rules, or regulations, of all suspected cases of:

a. mental or physical abuse, neglect, exploitation, or extortion;

b. any action posing a threat to a child's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

f. criminal activity;

6. knowingly making a false statement, including but not limited to:

a. application for initial license or renewal of license;

b. data forms;

c. records, including:

i. clinical;

ii. child; or

iii. facility;

d. matters under investigation by the department or the Office of the Attorney General; or

e. information submitted for reimbursement from any payment source;

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

8. the use of false, fraudulent or misleading advertising;

9. fraudulent operation of a PDHC facility by the owner, administrator, manager, member, officer, or director;

10. an owner, officer, member, manager, administrator, director, or person designated to manage or supervise child care has 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 court.

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

i. violence, abuse, or negligence of another person;

ii. misappropriation of property belonging to another person;

iii. cruelty, exploitation, or sexual battery of a person with disabilities;

iv. a drug offense;

v. crimes of a sexual nature;

vi. a firearm or deadly weapon; or

vii. fraud or misappropriation of federal or state funds, including Medicare or Medicaid funds;

11. failure to comply with all reporting requirements in a timely manner as required by the department;

12. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or children;

13. failure to allow or refusal to allow access to facility or child records by authorized departmental personnel;

14. bribery, harassment, or intimidation of any child or family member designed to cause that child or family member to use or retain the services of any particular PDHC facility; or

15. cessation of business or non-operational status.

E. If a PDHC facility license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, director, manager, or administrator of such PDHC facility may be prohibited from opening, managing, directing, operating, or owning another PDHC facility for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5221. Notice and Appeal of License Denial, License Revocation and License Non-Renewal and Appeal of Provisional License

A. Notice of a license denial, license revocation or license non-renewal shall be given to the provider in writing.

B. The PDHC facility has a right to an informal reconsideration of the license denial, license revocation, or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The PDHC facility must request the informal reconsideration within 10 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration must be in writing and shall be forwarded to the DHH Health Standards Section.

2. The request for informal reconsideration must include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the facility shall receive written notification of the date of the informal reconsideration.

4. The facility shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the denial, revocation or non-renewal, shall not be a basis for reconsideration.

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

7. The facility shall be notified in writing of the results of the informal reconsideration.

C. The PDHC facility has a right to an administrative appeal of the license denial, license revocation, or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the provider.

1. The PDHC facility must request the administrative appeal within 30 calendar days of the receipt of the notice of the results of the informal reconsideration of the license denial, license revocation, or license non-renewal. The facility may forego its rights to an informal reconsideration, and if so, the facility shall request the administrative appeal within 30 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for administrative appeal must be in writing and shall be submitted to the DHH Bureau of Appeals.

2. The request for administrative appeal must include any documentation that demonstrates that the determination was made in error and must include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Bureau of Appeals, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the facility shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a child, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The facility shall be notified of this determination in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal shall not be a basis for the administrative appeal.

D. If an existing PDHC facility has been issued a notice of license revocation and the facility's license is due for annual renewal, the department shall deny the license renewal. The denial of the license renewal does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the facility on a license denial, license non-renewal, or license revocation, the Bureau of Appeals shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Bureau of Appeals if good cause is shown.

1. If the final agency decision is to reverse the license denial, the license non-renewal, or the license revocation, the facility's license will be re-instated or granted upon the payment of any licensing fees or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final agency decision is to affirm the license non-renewal or the license revocation, the facility shall discharge any and all children receiving services. Within 10

days of the final agency decision, the facility shall notify the department's licensing section in writing of the secure and confidential location of where the child's records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new PDHC facility. The issuance of a provisional license to an existing PDHC facility is not considered to be a denial of license, a denial of license renewal, or a license revocation.

G. A facility with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey, shall have the right to an informal reconsideration and the right to an administrative appeal regarding the deficiencies cited at the follow-up survey.

1. The correction of a violation, noncompliance, or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

2. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

3. The facility shall submit a written request for informal reconsideration within five calendar days of receipt of the department's notice of the results of the follow-up survey.

a. The facility may forego its right to an informal reconsideration.

4. The facility shall submit a written request to the DHH Bureau of Appeals for an administrative appeal within five calendar days of receipt of the department's notice of the results of the informal reconsideration.

a. If the facility has opted to forego the informal reconsideration process, a written request for an administrative appeal shall be made within five calendar days of receipt of the department's notice of the results of the follow-up survey.

H. A facility with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge children unless the Bureau of Appeals issues a stay of the expiration.

1. A stay may be granted upon application by the provider at the time the administrative appeal is filed and only:

a. after a contradictory hearing; and

b. upon a showing that there is no potential harm to the children being served by the facility.

I. If a timely administrative appeal has been filed by a facility with a provisional initial license that has expired or by an existing provider whose provisional license has expired under the provisions of this Chapter, the Bureau of Appeals shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Bureau of Appeals if good cause is shown.

1. If the final agency decision is to remove all deficiencies, the facility's license will be reinstated upon the payment of any licensing fees or other fees due to the department, and the payment of any outstanding sanctions due to the department.

2. If the final agency decision is to uphold the deficiencies and affirm the expiration of the provisional license, the facility shall discharge all children receiving services. Within 10 calendar days of the final agency decision, the facility shall provide written notification to the department's licensing section of the secure and confidential location of where the child's records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5223. Complaint Surveys

A. The department shall conduct complaint surveys in accordance with La. R.S. 40:2009.13, et seq.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction may be required by the department for any complaint survey where deficiencies have been cited. If the department determines other action, such as license revocation is appropriate, a plan of correction may not be required and the facility will be notified of such action.

D. A follow-up survey may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices. If the department determines that other action, such as license revocation, is appropriate, a follow-up survey may not be required. The facility will be notified of any action.

E. The department may issue appropriate sanctions, including but not limited to, civil monetary penalties, directed plans of correction, and license revocations, for deficiencies and non-compliance with any complaint survey.

F. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff, child, or participant, as necessary or required to conduct the survey.

G. A PDHC facility which has been cited with violations or deficiencies on a complaint survey has the right to request an informal reconsideration of the validity of the violations or deficiencies. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 10 calendar days of the facility's receipt of the notice of the violations or deficiencies.

H. A complainant shall have the right to request an informal reconsideration of the findings of the complaint survey or investigation. The written request for an informal reconsideration shall be submitted to the Health Standards Section. The department must receive the written request within 30 calendar days of the complainant's receipt of the results of the complaint survey or investigation.

I. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as an administrative review. The facility or complainant shall submit all documentation or information for review for the informal reconsideration and the department shall consider all documentation or information submitted. There is no right to appear in person at the informal reconsideration of a complaint survey or investigation. Correction of the violation or deficiency shall not be the basis for the reconsideration. The provider and the complainant shall be notified in writing of the results of the informal reconsideration.

J. Except as provided in §5223.K, the informal reconsideration shall constitute final action by the department regarding the complaint survey or investigation, and there shall be no right to an administrative appeal.

K. In those complaints in which the department's Health Standards Section determines that the complaint involves issues that have resulted in, or are likely to result in, serious harm or death to the consumer, the complainant or the provider may appeal the informal reconsideration findings to the Bureau of Appeals.

1. The written request for an administrative appeal shall be submitted to the Bureau of Appeals and must be received within 30 calendar days of the receipt of the results of the informal reconsideration.

2. The hearing before the Bureau of Appeals is limited to the evidence presented at the informal reconsideration, unless the complainant or the facility has obtained additional evidence vital to the issues which could not have been obtained with due diligence before or during the informal reconsideration.

3. The administrative law judge shall only make a determination on the administrative appeal, based on the evidence presented, as to whether or not the complaint investigation or survey was conducted properly or improperly. The administrative law judge shall not have the authority to overturn or delete deficiencies or violations and shall not have the authority to add deficiencies or violations.

4. If the administrative law judge determines that the complaint investigation or survey was not conducted properly, he/she shall designate in writing and with specificity the methods by which a re-investigation shall be conducted.

5. No appeal shall lie from a re-investigation upon a prima facie showing that the re-investigation was conducted in accordance with the designations of the administrative law judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5225. Statement of Deficiencies

A. The following statements of deficiencies issued by the department to the PDHC facility shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and

2. any subsequent complaint survey statement of deficiencies.

B. Any statement of deficiencies issued by the department to a PDHC facility shall be available for disclosure to the public 30 calendar days after the provider submits an acceptable plan of correction of the deficiencies or 90 calendar days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in this Chapter, a facility shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the deficient practice, of the violation, or of the noncompliance shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 calendar days of

receipt of the statement of deficiencies, unless otherwise provided for in these provisions.

3. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section.

4. Except as provided for complaint surveys pursuant to La. R.S. 40:2009.11, et seq., and as provided in this Chapter for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

5. The provider shall be notified in writing of the results of the informal reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter C. Administration and Organization
§5231. Facility Administration and Management

A. The licensee of each PDHC facility shall have full legal authority and responsibility for the operation of the facility.

B. Each PDHC facility shall be organized in accordance with a written table of organization which describes the lines of authority and communication from the administrative level to the child care level. The organizational structure shall be designed to ensure an integrated continuum of services to the children.

C. The licensee of each facility shall designate one person as administrator who is responsible and accountable for the overall management and supervision of the PDHC facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5233. Policy and Procedures

A. The PDHC facility through collaboration by the medical director, administrator, and director of nursing shall develop, implement and maintain written policies and procedures governing all child care and related medical or other services provided to participants. The child care policies and procedures shall ensure compliance with these licensing standards.

B. All child care policies and procedures shall be reviewed at least annually and revised as needed.

C. Child care policies and procedures shall address the prevention, reporting, and investigation of abuse and neglect. All facility staff shall immediately report any suspected abuse and/or neglect of a child in accordance with state law.

D. The facility's written policy on prevention, reporting, and investigation of abuse and neglect, as well as the local child protection agency's telephone number, shall be posted in the facility in a conspicuous location.

E. The PDHC facility shall develop and implement a grievance policy and procedures. The grievance policy shall be used to process complaints by the child or parent.

1. The child or parent shall be entitled to initiate a grievance at any time.

2. The child and/or parent shall be informed of and provided a written copy of the grievance policy of the PDHC facility upon acceptance to the facility.

3. The administrator of the facility or his designee shall investigate all grievances and shall make reasonable attempts to address the grievance(s).

4. The administrator or his designee shall issue a written report or decision to the child and/or parent within five business days of receipt of the grievance. The written report shall contain:

- a. the findings of the investigation;
- b. resolution of the investigation; and
- c. the address and contact number of the licensing section of the department to which a complaint may be filed.

5. The facility shall prominently post the grievance procedure in an area accessible to the child and family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter D. Participation Requirements
§5237. Acceptance Criteria

A. Each PDHC facility shall have written policies and procedures governing the acceptance and participation of children in their pediatric day health care program.

B. Infants or children shall be considered for acceptance to the facility if they have been diagnosed with a medically complex condition(s) which is characterized by multiple significant medical problems that require extended care (i.e., medically fragile).

1. For purposes of these provisions, medically fragile conditions include, but are not limited to:

- a. severe lung disease requiring oxygen;
- b. severe lung disease requiring ventilator or tracheotomy care;
- c. complicated spina bifida;
- d. heart disease;
- e. malignancy;
- f. asthmatic exacerbations;
- g. cystic fibrosis exacerbations;
- h. neuromuscular disease;
- i. encephalopathy; and
- j. seizure disorders.

C. The child shall be stable for outpatient medical services and require ongoing nursing care and other interventions. Children with risk of infectious disease or acute infection shall be accepted only as authorized by the prescribing physician in collaboration with the PDHC facility medical director.

D. The prescribing physician, in consultation with the parent(s), shall recommend participation in a pediatric day health care program, taking into consideration the medical, emotional, psychosocial and environmental factors.

1. No child shall be accepted to participate in PDHC facility services without a prescription from the child's prescribing physician.

2. The medical director of the PDHC facility may provide the referral to the facility if he/she is the child's prescribing physician.

E. A consent form, outlining the purpose of the facility, parent's responsibilities, authorized treatment and emergency disposition plans shall be signed by the parent(s) and witnessed prior to acceptance into the facility's PDHC program. The parent(s) shall be provided a copy of the consent form and the facility shall retain a copy in their records.

F. Before care is initiated, the PDHC facility shall inform the parent orally and in writing of:

- a. those charges for services that will not be covered by the child's payor source; and
- b. the charges that the parent may be responsible for paying.

G. Conference Prior to Attendance. If the child meets the criteria for acceptance into a PDHC facility program, the prescribing physician or his/her designee shall contact the medical or nursing director of the PDHC facility to schedule a conference prior to the child attending the facility.

1. If the child is hospitalized at the time of referral, planning for PDHC participation shall include the parent(s), relevant hospital medical, nursing, social services and developmental staff to begin development of the plan of care that will be implemented following acceptance to the PDHC facility.

2. If the child is not hospitalized at the time of referral, planning for PDHC participation shall be conducted with the prescribing physician, parent(s), PDHC facility representative(s), and representative(s) of other relevant agencies to begin development of the plan of care that will be implemented following acceptance to the PDHC facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5239. Plan of Care

A. Each child that has been accepted to a facility and participates in a PDHC program shall have a plan of care developed to assure that the child receives appropriate services. Development of the plan of care shall begin within 72 hours of receipt of the referral to allow sufficient time for implementation of the plan upon placement in the facility.

B. The plan of care shall be developed under the direction of the facility's nursing director and shall:

1. be individualized to address the child's problems, goals, and required services including, but not limited to medical, nursing, psychosocial, therapy, dietary, and educational services;

2. ensure that the child's developmental needs are addressed;

a. the PDHC facility shall consider developmentally appropriate learning and play experiences as well as social interaction with other children;

3. identify specific goals for care;

a. plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established; and

4. contain specific criteria for transitioning from or discontinuing participation in pediatric day health care with the facility.

C. The plan of care shall be signed by the prescribing physician, the authorized representative of the facility, and the parent(s). Copies of the plan of care shall be given to the prescribing physician and other agencies as appropriate. The facility shall retain a copy in their records and a copy shall be given to the parent(s) if requested.

D. The plan of care for continuation of services shall be:

1. reviewed and updated at least quarterly or as indicated by the needs of the child;

2. completed by a registered nurse;

3. reviewed and ordered by the prescribing physician; and

4. incorporated into the patient's clinical record within seven calendar days of receipt of the prescribing physician's order.

E. The medical director shall review the plans of care in consultation with PDHC staff and the prescribing physician, every 60 days or more frequently as the child's condition dictates. Prescribed services and therapies included in the plan of care shall be adjusted in consultation with the prescribing physician to accommodate the child's condition.

F. Facility staff shall administer services and treatments in accordance with the plan of care as ordered by the physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5241. Participant Rights

A. The parent(s) of a child who participates in PDHC services shall, prior to or upon acceptance, receive a written statement of the services provided by the facility.

B. Before care is initiated, the child and or the parent have the right to be advised in writing of his/her liability for payment for services rendered by the PDHC facility.

C. Each child that participates in PDHC facility services shall:

1. be treated with consideration, respect, and full recognition of his or her dignity and individuality;

2. receive care, treatment, and services in accordance with their plan of care;

3. have the right to privacy regarding medical treatment and medical records; and

a. personal and medical records shall be treated confidentially in compliance with federal and state laws, rules and regulations;

4. be free from mental and physical abuse.

D. The PDHC facility shall refrain from using chemical and physical restraints unless authorized by a physician according to clear and indicated medical requirements.

E. Each child or parent shall have the right, personally or through others, to present grievances without reprisal, interference, coercion, or discrimination against the child as a result of such grievance.

F. The facility shall prominently post the child's rights and the abuse and neglect procedures in an area accessible to the child and family.

G. Each parent shall be notified of any accidents or incidents involving their child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter E. Pediatric Day Health Care Services

§5245. General Provisions

A. During the delivery of services, child care goals and interventions shall be coordinated in conjunction with providers and caregivers to ensure appropriate continuity of care from acceptance to the PDHC facility until the child's participation ends.

B. The facility shall maintain a system of communication and integration of services, whether provided directly or under arrangement, that ensures:

1. identification of the child's needs and barriers to care;
2. ongoing coordination of all disciplines providing care; and
3. contact with the physician regarding any relevant medical issues.

C. The child's prescribing physician shall maintain responsibility for the overall medical therapeutic plan and shall be available for consultation and collaboration with the facility's medical and nursing personnel as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5247. Developmental and Educational Services

A. If the PDHC facility provides services for which a school district is responsible, the PDHC facility may enter into a Memorandum of Understanding (MOU) with the school district.

B. For any child enrolled in the early intervention program (EarlySteps) or the local school district's program under the Individuals with Disabilities Act, the PDHC facility shall adhere to the following.

1. In the development of the plan of care, the PDHC facility shall consider the components of the individualized family services plan for children under 3 years old or the individualized education program for children from 3 years old through 21 years old.

2. The PDHC facility shall not duplicate services already provided through the early intervention program or the local school district.

3. Upon request by the early intervention program or the local school district, the PDHC facility shall make available any records necessary to develop, review or revise an individualized family service plan or individualized education plan.

C. If a child has not been previously enrolled in a Local Education Agency (LEA), the PDHC facility shall make a referral to the LEA in the area where the PDHC facility is located. If a child has not been previously enrolled in the early intervention system, the PDHC facility shall refer the child to the regional single point of entry (SPOE).

D. The PDHC facility shall secure a signed release from the child's parent or guardian in order to receive copies of records for a:

1. school aged child from any school system that the child may have been enrolled in; or
2. child, from birth to three years old, for early intervention services from the regional SPOE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5249. Medication Administration

A. All medications administered to children in the PDHC facility shall be ordered in writing by the child's prescribing physician or by a specialty physician after consultation and coordination with the PDHC facility. This includes, but is not limited to:

1. over the counter medications;
2. oral electrolyte solutions (Pedialyte, Pedia Vance or similar products); and
3. oxygen.

B. The PDHC facility shall coordinate with the child/parent(s) to ensure that the child's medications are brought to the facility each day the child receives services at the facility.

C. The facility shall adhere to the following medication handling and administration standards.

1. Medications shall be kept in their original packaging and contain the original labeling from the pharmacy.

2. Each child's medications shall be individually stored in a secured location.

3. The PDHC facility shall demonstrate coordination between family and staff regarding medication administration (i.e. last dose given by family or staff).

4. Schedule II substances shall be kept in a separately locked, securely fixed box or drawer(s) in a locked medication cabinet, hence under two separate locks.

- a. The facility shall have established policies and procedures for the handling and administration of controlled substances.

5. Medications requiring refrigeration shall be kept in a refrigerator separate from foods.

D. The PDHC facility shall maintain a record of medication administration. The record shall contain:

1. each medication ordered;
2. each medication administered;
3. the date, time and dosage of each medication administered; and
4. the initials of the person administering the medication.

D. The PDHC facility shall have policies and procedures that address notification of the appropriate authorities of any theft or unexplained loss of any controlled substances, syringes, needles or prescription pads within 48 hours of discovery of such loss or theft.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5251. Nutritional Services

A. The facility shall ensure that if dietary services are ordered in the child's plan of care, the services shall be provided by a Louisiana licensed registered dietician. The registered dietician shall be available regarding the nutritional needs, the special diets of individual children, and to assist in the development of policies and procedures for the handling, serving, and storage of food.

B. Meals shall be provided on an as needed or prescribed basis. The facility shall incorporate appropriate nutritional services into the child's plan of care as prescribed by the physician and in collaboration with the child and parents to ensure appropriate formula, foods, utensils, equipment, and supplies are readily available. Therapeutic diet orders shall be maintained in the child's file.

C. A minimum of one meal and appropriate snacks and beverages shall be provided as prescribed in the plan of care. The meals and snacks shall be age appropriate.

1. If the plan of care requires more frequent meals or nutrition, the PDHC facility shall provide these services while the child is at the PDHC facility. The PDHC facility shall coordinate with the child and family to ensure that nutritional supplies and formula used by the child are available at the PDHC facility without duplication.

D. All food in the facility shall be safe for human consumption.

1. Grade "A" pasteurized fluid milk and fluid milk products shall be used or served.

E. All food preparation areas shall be maintained in accordance with state and local sanitation and safe food handling standards. Pets are not allowed in food preparation and serving areas.

F. If food is prepared in a central kitchen and delivered to separate facilities, provisions shall be made and approved by the Department of Health and Hospitals, Office of Public Health for proper maintenance of food temperatures and a sanitary mode of transportation.

G. The facility's refrigerator(s) shall be maintained at a temperature of 45 degrees Fahrenheit or below. Thermometers shall be provided for all refrigerators. A daily temperature log of the refrigerator shall be maintained by the PDHC facility. Food stored in the refrigerator shall be dated, labeled and appropriately packaged.

H. The water supply shall be adequate, of a safe sanitary quality and from an approved source. Clean sanitary drinking water shall be available and accessible in adequate amounts at all times.

1. Disposable cups, if used, shall be stored in such a way as to prevent contamination.

I. The ice scoop for ice machines shall be maintained in a sanitary manner with the handle at no time coming in contact with the ice.

J. Staff shall be available in the dining area to serve the food and to give individual attention as needed.

K. Specific times for serving meals shall be established and posted.

L. Written reports of inspections by the Office of Public Health shall be kept on file in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5253. Social Services

A. The facility shall provide directly or through contract or arrangement the social services as ordered by the prescribing physician or medical director. Social services shall be provided in accordance with the Louisiana State Board of Social Work Examiners requirements.

B. The facility shall ensure that if social services are ordered in the child's plan of care, the care or services shall be rendered by a social worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5255. Therapy Services

A. The facility shall provide directly or through contract or arrangement the therapies as ordered by the prescribing physician or medical director. Therapies and services shall be provided in accordance with applicable State Boards' requirements and the child's plan of care if so ordered.

B. Occupational Therapy. The facility shall ensure that occupational therapy services are provided by:

1. an individual authorized by the Louisiana State Board of Medical Examiners (LSBME); or

2. a certified occupational therapy assistant in accordance with the LSBME's requirements.

C. Physical Therapy. The facility shall ensure that physical therapy services are provided by:

1. an individual licensed by the Louisiana State Board of Physical Therapy Examiners (LSBPTE); or

2. a physical therapy assistant in accordance with the LSBPTE requirements.

D. Respiratory Care. The facility shall ensure that respiratory care shall be provided by:

1. an individual licensed as a respiratory therapist by the LSBME;

2. a registered nurse with documented experience in providing respiratory care in accordance with the Louisiana State Board of Nursing; or

3. a licensed practical nurse with documented experience in providing respiratory care in accordance with the Louisiana State Board of Practical Nurse Examiners.

E. Speech-Language Pathology. The facility shall ensure that speech-language pathology services are provided by an individual authorized by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5257. Transportation

A. The PDHC facility shall provide or arrange transportation of children to and from the facility and is responsible for the safety of the children during transport. The family may choose to provide their own transportation. Whether transportation is provided by the facility on a daily basis or as needed, these general regulations shall apply.

1. If the PDHC facility arranges transportation for participants through a transportation agency, the facility shall maintain a written contract which is signed by a facility representative and a representative of the transportation agency. The contract shall outline the circumstances under which transportation will be provided.

a. This written contract shall be dated and time limited and shall conform to these licensing regulations.

b. The transportation agency shall maintain in force at all times current commercial liability insurance for the operation of transportation vehicles, including medical coverage for children in the event of accident or injury. Documentation of the insurance shall consist of the insurance policy or current binder that includes the name of the transportation agency, the name of the insurance agency, policy number, and period of coverage and explanation of the coverage.

B. Transportation arrangements shall conform to state laws, including laws governing the use of seat belts and child restraints. Vehicles shall be accessible for people with disabilities or so equipped to meet the needs of the children served by the PDHC facility.

C. The driver or attendant shall not leave the child unattended in the vehicle at any time.

D. Vehicle and Driver Requirements.

1. The vehicle shall be maintained in good repair with evidence of an annual safety inspection.

2. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

3. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

4. The facility shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport children on behalf of the PDHC facility.

5. The facility shall maintain in force at all times current commercial liability insurance for the operation of center vehicles, including medical coverage for children in the event of accident or injury.

a. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment.

b. Documentation shall consist of the insurance policy or current binder that includes the name of the PDHC facility, the name of the insurance company, policy number, and period of coverage and explanation of the coverage.

6. The vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in each facility or contracted vehicle. This shall include oxygen, pulse oximeter and suction equipment.

8. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom the child may be released.

a. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

9. The driver or attendant shall maintain an attendance record for each trip. The record shall include the driver's name, the date, names of all passengers (children and adults) in the vehicle, and the name of the person to whom the child was released and the time of release.

a. Documentation shall be maintained on file at the facility whether transportation is provided by the facility or contracted.

10. There shall be information in each vehicle identifying the name of the administrator and the name, telephone number and address of the facility for emergency situations.

E. Child Safety Provisions

1. The driver plus one appropriately trained staff member shall be required at all times in each vehicle when transporting any child. Staff shall be appropriately trained on the needs of each child.

2. Each child shall be safely and properly:

- a. assisted into the vehicle;
- b. restrained in the vehicle; and
- c. assisted out of the vehicle.

3. Only one child shall be restrained in a single safety belt or secured in an American Academy of Pediatrics recommended, age appropriate safety seat.

4. The driver or appropriate staff person shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle.

a. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

5. During field trips, the driver or staff member shall check the vehicle and account for each child upon arrival at and departure from each destination to ensure that no child is left on the vehicle or at any destination.

a. Documentation shall include the signature of the person conducting the check and the time the vehicle was checked for each loading and unloading of children during the field trip.

6. Appropriate staff person(s) shall be present when each child is delivered to the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter G. Facility Responsibilities **§5263. General Provisions**

A. A PDHC facility shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the facility's responsibilities are carried out and that the following functions are adequately performed:

1. administrative functions;
2. fiscal functions;
3. clerical functions;
4. housekeeping, maintenance and food service functions;
5. direct service functions;
6. supervisory functions;
7. record-keeping and reporting functions;
8. social services functions; and
9. ancillary service functions.

B. The facility shall ensure that all staff members are properly certified and/or licensed as legally required.

C. The facility shall establish procedures to assure adequate communication among staff in order to provide continuity of services to the participant. This system of communication shall include:

1. a regular review of individual and aggregate problems of participants, including actions taken to resolve these problems;
2. sharing daily information, noting unusual circumstances and other information requiring continued action by staff; and
3. the maintenance of all accidents, personal injuries and pertinent incidents records related to implementation of the child's plan of care.

D. The facility shall not provide service to more participants than the number specified on its license on any given day or at any given time.

E. The facility shall make available to the department any information, which the facility is required to have under these licensing provisions and is reasonably related to the assessment of compliance with these provisions. The participant's rights shall not be considered abridged by this requirement.

F. The PDHC facility shall request a criminal history check on non-licensed persons prior to employment, upon rehire at the PDHC facility, and at least once every three years.

1. A PDHC facility may make an offer of temporary employment to a non-licensed person pending receipt of the results of the criminal history check provided that the check has been requested of the appropriate agency. Any non-

licensed individual offered temporary employment prior to the receipt of the results of the criminal history check shall be under the direct supervision of a permanent employee or shall be in the presence of an adult member of the immediate family of the patient.

G. The PDHC facility shall not hire any non-licensed individual who has been convicted of a crime listed in R.S. 40:1300.53(A)(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5265. Staffing Requirements

A. Administrator. The facility administrator shall be a full time employee of the PDHC facility and shall designate in writing a person to be responsible for the facility when he/she is absent from the facility for more than 24 hours. This person is known as the administrator's designee.

1. Qualifications. The administrator and administrator's designee shall have three years of experience in the delivery of health care services and meet one of the following criteria:

- a. be a physician currently licensed in Louisiana;
- b. be a registered nurse currently licensed in Louisiana;
- c. be a college graduate with a bachelors degree; or
- d. have an associate's degree, with one additional year of documented management experience.

2. Any licensed person functioning in the role of administrator or administrator's designee shall have an unrestricted, current license issued by the appropriate Louisiana licensing board.

3. The administrator and the administrator's designee shall be at least 21 years of age.

4. The administrator or the administrator's designee shall have the following responsibilities:

- a. ensuring that the PDHC facility complies with federal, state and local laws, rules and regulations;
- b. maintaining the following written records and any other records required by local, state or federal laws and these licensing provisions:

- i. daily census record, which shall indicate the name of each child currently receiving services in the facility; and

- ii. a record of all accidents, unusual incidents, and incidents involving alleged abuse or neglect involving any child or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility;

- (a). Such records shall contain a clear description of each accident or incident, the names of the persons involved, a description of all medical or other services provided to these , specifying who provided such services, and the steps taken to prevent recurrence of such accident or incidents in the future.

- c. ensuring that the facility immediately notifies the parent/guardian of any and all accidents or incidents involving their child;

- d. ensuring that the facility provides written notification within 24 hours to the parent/guardian of any and all accidents or incidents; and

- e. making all reports and referrals to law enforcement or other authorities as required by Federal or State law, rule or regulation.

5. The administrator shall maintain a copy of current agreements with consultants and contracted individuals utilized by the PDHC facility in the facility's records. The record shall include verification of credentials and relevant experience of each person providing service.

6. The administrator shall maintain a personnel record for each employee which shall contain:

- a. a current copy of a Louisiana certificate and/or license as applicable;

- b. the original employment application, references, employment history for the preceding five years if applicable; and

- c. a copy of all job performance evaluations.

7. The administrator shall ensure that the facility develops and maintains a current job description for each employee.

8. The administrator shall provide each employee access to written personnel policies governing conditions of employment. The PDHC facility shall develop and implement an employee grievance procedure.

9. The administrator shall ensure that the facility conducts annual written job performance evaluations or contract monitoring for each employee and contracted individual. The performance evaluation shall note strengths and weaknesses and shall include plans to correct any job performance weakness. Performance evaluations or contract monitoring shall be reviewed with each employee and each contracted individual.

10. The administrator shall ensure that the facility assigns duties to employees that are consistent with their job descriptions and with their levels of education, preparation and experience.

11. The administrator shall ensure that the facility provides necessary qualified personnel and ancillary services to ensure the health, safety, and proper care of each child.

12. The administrator shall ensure that the facility develops and implements policies and procedures which shall be included in the facility's policy manual.

13. The Administrator shall ensure that the facility has documentation of a satisfactory criminal record check of each non-licensed employee, and shall comply with the provisions of R.S. 40:1300.51-56.

B. Medical Director. The medical director of the PDHC shall be a physician currently licensed in Louisiana without restrictions.

1. The medical director shall be:

- a. a board certified pediatrician;
- b. a pediatric specialist with knowledge of medically fragile children; or
- c. another medical specialist or subspecialist with knowledge of medically fragile children.

2. Responsibilities of the medical director include, but are not limited to:

- a. periodic review of the services provided by the PDHC facility to assure acceptable levels of quality of care and services;

- b. participation in development and implementation of appropriate performance improvement and safety initiatives;

c. participation in the development of new programs and modifications of existing programs;

d. assurance that medical consultation will be available in the event of the medical director's absence;

e. serving on committees as defined and required by these rules and by the facility's policies;

f. consulting with the facility's administrator on the health status of the facility's personnel as it relates to infection control and or the child's health and safety;

g. reviewing reports of all accidents or unusual incidents occurring on the premises and identifying to the facility's administrator hazards to health and safety; and

h. development and implementation of a policy and procedure for the delivery of emergency services and the delivery of regular physician's services when the child's attending physician or designated alternative is not available.

3. The medical director shall be available for consultation or collaboration with the prescribing physician and/or facility staff.

4. The medical director shall participate in reviews of the plan of care for each child receiving services.

5. The Medical Director may serve as the administrator of the PDHC facility.

C. Director of Nursing (DON). Each PDHC shall have a full time director of nursing.

1. The director of nursing shall be a registered nurse (RN) currently licensed in the state of Louisiana without restrictions, and shall:

a. hold a current certification in Cardio Pulmonary Resuscitation (CPR);

b. hold current certification in Basic Cardiac Life Support (BCLS) and Pediatric Advanced Life Support (PALS); and

c. have a minimum of two years general pediatric nursing experience of which at least six months shall have been spent caring for medically fragile or technology dependent infants or children in one of the following settings:

i. pediatric intensive care;

ii. neonatal intensive care;

iii. pediatric emergency care;

iv. PDHC facility;

v. prescribed pediatric extended care center; or

vi. similar care setting during the previous five years.

2. The DON's responsibilities shall include, but are not limited to:

a. the supervision of all aspects of patient care to ensure compliance with the plan of care;

b. all activities of professional nursing staff and direct care staff to ensure compliance with current standards of accepted nursing and medical practice;

c. compliance with all federal and state laws, rules and regulation related to the delivery of nursing care and services;

d. daily clinical operations of the PDHC facility;

e. implementation of personnel and employment policies to assure that only qualified personnel are hired, including verification of licensure and/or certification prior to employment and annually thereafter;

f. maintaining records to support competency of all nursing and direct care staff;

g. implementation of PDHC facility policy and procedures that establish and support quality patient care;

h. development, implementation and supervision of an employee health program in accordance with state laws, rules or regulations;

i. providing for orientation and in-service training to employees to promote effective PDHC services and safety to the patient and to familiarize staff with regulatory issues, as well as agency policy and procedures;

j. performing timely annual nursing and direct care personnel performance evaluations;

k. ensuring the PDHC facility has mechanisms for disciplinary action for nursing and direct care personnel;

l. assuring participation in regularly scheduled appropriate continuing education for all nursing and direct care personnel;

m. assuring that the care provided by the nursing and direct care personnel promotes effective PDHC services and the safety of the child; and

n. being on-site during normal operating hours.

3. The agency shall designate in writing a registered nurse who will assume the responsibilities of the DON during his/her absence.

4. The DON may serve as the administrator or administrator's designee if qualified. If the DON is functioning as the administrator or administrator's designee, the DON shall not be included in the total staffing ratio for nursing or direct care services.

D. Registered Nurse (RN). Each PDHC shall have sufficient RN staffing to ensure that the care and services provided to each child is in accordance with the child's plan of care.

1. Each RN employed by the facility shall have at least the following qualifications and experience:

a. be currently licensed in the state of Louisiana without restrictions as a registered nurse;

b. hold a current certification in CPR; and

c. have either:

i. one or more years of pediatric experience as an RN, with at least six months experience caring for medically fragile or technologically dependent children; or

ii. two or more years of documented prior pediatric nursing experience as a licensed practical nurse (LPN) and with at least six months experience caring for medically fragile or technologically dependent children.

E. Licensed Practical Nurse (LPN). Each PDHC facility shall have sufficient LPN staffing to ensure that the care and services provided to each child is in accordance with the child's plan of care.

1. Each LPN employed by the facility shall have at least the following qualifications and experience:

a. be currently licensed in the state of Louisiana without restrictions as a licensed practical nurse; and

b. hold a current certification in CPR; and

c. have either:

i. one year or more years experience in pediatrics as an LPN; or

ii. two years of documented prior pediatric experience working as a direct care worker caring for medically fragile child(ren).

F. Direct Care Staff. Direct care staff shall work under the supervision of the registered nurse and shall be

responsible for providing direct care to children at the PDHC facility.

1. For the purposes of this Section, other direct care staff shall include:

- a. nursing assistants;
- b. certified nursing assistants;
- c. patient care technicians;
- c. medical assistants;
- e. emergency medical technicians (EMT);
- f. on-site therapists; and
- g. individuals with training and experience in education, social services or child care related fields.

2. Each direct care staff person employed by the facility shall have at least the following qualifications and experience:

- a. one year documented employment experience in the care of infants or children or one year experience in caring for a medically fragile child;
- b. be able to demonstrate the necessary skills and competency to meet the direct care needs of the child(ren) to which they are assigned;
- c. be currently registered with the Certified Nurse Aide (CAN) Registry or Direct Service Worker (DSW) Registry as a CNA or DSW in good standing and without restrictions;
- d. hold a current certification in Cardio Pulmonary Resuscitation (CPR); and
- e. be 18 years of age or older.

G. Nursing and Direct Care Staffing Levels

1. PDHC facilities shall have sufficient nursing and direct care staff to meet the needs of each infant and child receiving services in the PDHC in accordance with the plan of care.

2. Total staffing for nursing services and direct care shall, at a minimum, meet the following ratios according to the daily census:

Children	Total Nursing or Direct Care Staff	RN	RN or LPN	RN,LPN, or Direct Care staff
1	1	1		
2-6	2	1		1
7-9	3	1	1	1
10-12	4	1	1	2
13-15	5	2	1	2
16-18	6	2	1	3
19-21	7	2	2	3
22-24	8	2	2	4
25-27	9	3	2	4
28-30	10	3	2	5
31-33	11	3	3	5
34-36	12	3	3	6
37-39	13	4	3	6
40-42	14	4	3	7
43-45	15	4	4	7

3. If the PDHC facility has a census of more than 45 children, the staffing shall increase by one staff for every three children alternating between a direct care staff, an RN, and an LPN in such order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5267. Orientation, Staff Development and Training

A. Each PDHC facility shall develop staff and parent orientation and training programs.

B. The PDHC facility shall maintain documentation of orientation and training of each new employee. The orientation shall include, but is not limited to the PDHC facility's:

- 1. philosophy;
- 2. organization;
- 3. practices, policies and procedures;
- 4. ethics and confidentiality;
- 5. record keeping;
- 6. information related to child development; and
- 7. goals.

C. Orientation shall be given to parents with children who are accepted at the PDHC facility to acquaint the parent(s) with the philosophy and services that will be provided.

D. The PDHC facility shall maintain documentation of an assessment of the skills, knowledge and competencies of the staff.

E. The PDHC facility shall develop training to include:

- 1. quarterly staff development programs appropriate to the category of personnel;
- 2. documentation of all staff development programs, and required participation; and
- 3. Current Basic Life Support certification for all staff.

E. On-going training shall be provided to the parent(s) as necessary and based on the individual needs of the child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5269. Record Keeping

A. Medical Records. A medical record shall be developed at the time the child is accepted at the PDHC facility and maintained throughout the facility's care of the child.

1. The record shall be signed by authorized personnel and shall contain at least the following documents:

- a. a medical plan of treatment and a nursing plan of care;
- b. the referral and admission documents concerning the child;
- c. physician orders;
- d. medical history, including allergies and special precautions;
- e. documentation of immunizations;
- f. medication/treatment administration record;
- g. concise, accurate information and initialed case notes reflecting progress toward achievement of care goals or reasons for lack of progress;
- h. documentation of nutritional management and therapeutic diets, as appropriate;
- i. documentation of physical, occupational, speech and other special therapies;
- j. correspondence and other documents concerning the child;
- k. an order written by the prescribing physician if the child terminates services with the facility, if applicable; and

1. a summary, including the reason why the child is terminating services with the facility, if applicable.

2. The medical records shall contain the individualized nursing care plan that shall be developed within 10 working days of the child's acceptance to the PDHC facility.

a. The nursing care plan shall be reviewed and revised quarterly, or more frequently as necessary. The nursing care plan shall include any recommendations and revisions to the care plan based on consultation with other professionals involved in the child's care.

3. The plan of care, telephone and/or verbal orders shall be signed by the physician within a timely manner, not to exceed 30 days.

a. The physician's verbal orders may be accepted by a registered nurse, a qualified therapist or a licensed practical nurse as authorized by state and federal laws and regulations.

b. Verbal orders taken by an LPN shall be cosigned by an RN or appropriate therapist.

c. Electronic physician signatures may be accepted per PDHC facility policies.

d. Stamped physician signatures shall not be accepted.

4. All medical and patient records shall be maintained by the PDHC facility in accordance with federal and state law, rule, and regulation regarding confidentiality, privacy and retention.

B. Personnel Records. Personnel records shall be kept in a place, form and system in accordance with appropriate medical and business practices. All personnel records shall be available in the facility for inspection by the department during normal business hours. These records shall be maintained in accordance with federal and state laws, rules, and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5271. Infection Control

A. The PDHC facility, at the minimum, shall meet the following infection control requirements.

1. The PDHC facility shall have an isolation room with a glass area for observation of the child.

2. Isolation procedures shall be used to prevent cross-infections.

3. All cribs and beds shall be labeled with the child's name. Linens shall be removed from the crib for laundering purposes only.

4. Bed linens shall be changed when soiled and as necessary, but not less than twice weekly.

5. Antimicrobial soap and disposable paper towels shall be at each sink.

6. To prevent the spread of infection from one child to another, staff shall wash their hands using appropriate hand washing techniques or use antibacterial agents after direct contact with each child.

7. Children suspected of having a communicable disease, which may be transmitted through casual contact, as determined by the facility's medical director in consultation with the prescribing physician or other specialist, shall be isolated. The following actions must be taken:

a. the parents shall be notified of the condition immediately;

b. the child shall be removed from the PDHC facility as soon as possible; and

c. when the communicable disease is no longer present, as evidenced by a written physician's statement, the child may return to the PDHC facility.

B. The facility shall have policies and procedures that address staff members who are suspected of having a communicable disease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5273. Quality Assurance

A. All PDHC facilities shall have a quality assurance program and shall conduct quarterly reviews of the facility's medical records for at least a fourth of the children served by the PDHC facility at the time of the quality assurance review. The quarterly review sample shall be randomly selected so each child served at the center has an equal opportunity to be included in the review.

B. Each facility shall establish a quality assurance committee comprised of the following members:

1. the medical director;
2. the administrator;
3. the director of nursing; and
4. three other committee members as determined by each PDHC facility.

C. The quality assurance review shall be conducted by at least two members of the quality assurance committee. Within 15 calendar days of its review, the quality assurance committee shall furnish copies of its report to the PDHC facility medical and nursing directors.

D. Each quarterly quality assurance review shall include:

1. a review of the goals in each child's nursing plan of care;
2. a review of the steps, process, and success in achieving the goals;
3. identification of goals not achieved as expected;
4. reasons for lack of goal achievement;
5. plans to promote goal achievement;
6. recommendations to be implemented; and
7. a review of previous recommendations or revisions to determine if such were implemented and effective.

E. The quality assurance review will also ascertain and assure the presence of the following documents in each child's medical record:

1. a properly executed consent form;
2. a medical history for the child including notations from visits to health care providers; and
3. documentation of immunizations, allergies and special precautions.

F. The PDHC facility medical and nursing directors shall review the quality assurance committee report within 10 days. The medical director in consultation with the prescribing physician shall approve and order implementation of revisions to the plan of care as appropriate.

G. The PDHC facility shall ensure the plan of care has been revised to implement the approved recommendations of the quality assurance report.

1. Evidence that the plan of care has been revised shall be forwarded to the quality assurance committee within 10 calendar days of receipt of the quality assurance committee report.

2. Implementation of revisions to the plan of care shall be documented in the child's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter H. Safety and Emergency Preparedness
§5279. Safety and Emergency Services

A. All PDHC facilities shall conform to state standards prepared by the Office of State Fire Marshal (OFSM), and shall be inspected annually by OFSM. A copy of the current annual fire inspection report shall be on file at the facility. Documentation of a satisfactory fire safety inspection shall be provided at the time of the licensee's annual licensure renewal.

B. A working telephone capable of incoming and outgoing calls shall be available at all times in the PDHC facility. Coin operated telephones or cellular telephones are not acceptable for this purpose. If the PDHC has multiple buildings, such a working telephone shall be located in each of the buildings.

C. Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones. Fire, police, medical facility and poison control shall be posted on or near each telephone.

D. The PDHC facility's address shall be posted with the emergency numbers.

E. Emergency transportation shall be provided by a licensed emergency medical services provider. If emergency transportation is necessary, the PDHC facility shall immediately notify the parents. If the parents are not able to be contacted, the PDHC facility shall send a staff member to meet the child at the hospital.

1. The PDHC facility shall provide a transfer form to the emergency transportation provider.

2. The transfer form shall include:
a. the child's name and age;
b. contact information for the family;
c. the prescribing physician's name and contact information;

d. the PDHC facility's name and contact information; and

e. the child's diagnoses, allergies, and medications.

F. Construction, remodeling or alteration of structures shall be done in such a manner to prevent hazards or unsafe conditions (fumes, dust, safety hazards).

G. Unused electrical outlets shall be protected by a safety plug cover.

H. Strings and cords such as those used on window coverings shall not be within the reach of children.

I. First aid supplies shall be kept on site and easily accessible to employees, but not within the reach of children.

J. Fire drills shall be conducted at least once per quarter. These shall be conducted at various times of the day and night (if night time care is provided) and shall be documented. Documentation shall include:

1. the date and time of the drill;
2. the number of children present;
3. the amount of time to evacuate the PDHC facility;

4. any problems noted during the drill and corrective action taken; and

5. the signatures (not initials) of staff present.

K. The entire PDHC facility shall be checked after the last child departs to ensure that no child is left unattended at the facility. Documentation of the visual check shall include the date, time and signature of the staff member(s) conducting the visual check.

L. Sharp wastes, including needles, scalpels, razors or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use.

1. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container.

2. The containers of sharp wastes shall either be incinerated, on site or off site, or rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

M. The PDHC facility shall establish a written policy that is compliant with Occupational Safety and Health Administration standards for the handling and disposal of all infectious, pathological, and contaminated waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§5281. Emergency Preparedness

A. A disaster or emergency is a man-made or natural event or occurrence which causes harm or damage, or has the potential to cause harm or damage. A disaster or emergency may be local, community-wide, regional or statewide. Disasters or emergencies include, but are not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. health crisis.

B. The PDHC facility shall provide education and resources to assist the parents in developing an emergency preparedness plan for their family. The PDHC facility shall ensure that each child has a plan in the event of an emergency or disaster.

C. The PDHC facility's emergency preparedness plan shall include provisions for providing shelter and services during a disaster or emergency situation to each technology dependent child admitted to or receiving services at the PDHC facility. The PDHC facility's emergency preparedness plan shall also contain provisions for assisting the state, parish, and Office of Homeland Security and Emergency Preparedness (OHSEP) with the provision of shelter and services during a disaster or emergency situation to other technology dependent children on a case-by-case basis considering the PDHC's capacity and safety to all children receiving services.

D. Continuity of Operations. The PDHC facility shall have an emergency preparedness plan to maintain continuity

of the facility's operations in preparation for, during and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the children. The facility shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency. The plan shall address at a minimum:

1. provisions for the delivery of essential care and services to children;
2. provisions for the management of staff, including provisions for adequate, qualified staff as well as for distribution and assignment of responsibilities and functions;
3. provisions for back up staff;
4. the method that the PDHC facility will utilize in notifying the child's family if the child is evacuated to another location while in the direct care of the PDHC facility. This notification shall include:
 - a. the date and approximate time that the facility is evacuating;
 - b. the place or location to which the child is evacuating, including the:
 - i. name;
 - ii. address; and
 - iii. telephone number; and
 - c. a telephone number that the family may call for information regarding the facility's evacuation;
5. provisions for ensuring that supplies, medications, and a copy of the plan of care are sent with the child if the child is evacuated; and
6. the procedure or methods that will be used to attach identification to the child. The facility shall designate a staff person to be responsible for this identification procedure. This identification shall remain attached to the child during all phases of an evacuation and shall include the following minimum information:
 - a. current and active diagnosis;
 - b. medications, including dosage and times administered;
 - c. allergies;
 - d. special dietary needs or restrictions; and
 - e. next of kin, including contact information.

E. The PDHC facility shall have an emergency generator with sufficient generating power to continue the functions of medical equipment and the HVAC system in the event of a power failure. The emergency generator shall be tested every 30 days and satisfactory mechanical operation shall be documented on a log designed for that purpose and signed by the person conducting the test.

F. If the state, parish or local office of OHSEP orders a mandatory evacuation of the parish in which the PDHC facility is located, the PDHC facility shall ensure that any child at the PDHC facility at that time shall be evacuated in accordance with the child's emergency plan and the PDHC facility's emergency preparedness plan.

G. Emergency Plan, Review and Summary

1. The PDHC facility shall review and update each child's emergency plan in coordination with the parent(s) at least annually.
2. The PDHC facility shall review and update its emergency preparedness plan at least annually.

3. The facility's emergency plan shall be activated, either in response to an actual emergency or in a drill at least annually.

H. Facility Requirements

1. The PDHC facility shall cooperate with the department and with the state, parish and local OHSEP in the event of an emergency or disaster and shall provide information as requested.

2. The PDHC facility shall monitor weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials.

I. All PDHC facility employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training, and participation in planned drills for all personnel. The purpose shall be that each employee promptly and correctly performs his/her specific role in the event of a disaster or emergency.

J. Upon request by the department, the PDHC facility shall submit a copy of its emergency preparedness plan and a written summary attesting how the plan was followed and executed. The summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of children that occurred during execution of the plan, evacuation or temporary relocation, including the date, time, causes and circumstances of the injuries and deaths.

K. Inactivation of License due to Declared Disaster or Emergency

1. A licensed PDHC facility licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

a. the licensed PDHC facility provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

- i. the PDHC 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;
- ii. the licensed PDHC facility intends to resume operation as a PDHC facility in the same service area;
- iii. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;
- iv. includes an attestation that all children have been properly released or transferred to another provider; and

v. provides a list of each child's name and the location where that child has been released or transferred to;

b. the licensed PDHC facility resumes operating as a PDHC facility in the same service area within one year of the issuance of such an executive order or proclamation of emergency or disaster;

c. the licensed PDHC facility continues to pay all fees and costs due and owed to the department including, but not limited to:

- i. annual licensing fees; and
- ii. outstanding civil monetary penalties; and

d. the licensed PDHC facility continues to submit required documentation and information to the Department, including but not limited to cost reports.

2. Upon receiving a completed written request to inactivate a PDHC facility license, the department shall issue a notice of inactivation of license to the PDHC facility.

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a PDHC facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the PDHC facility shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing survey;

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees, approval from the Office of Public Health and the Office of State Fire Marshall; and

d. the provider resumes operating as a PDHC facility in the same service area within one year.

4. Upon receiving a completed written request to reinstate a PDHC facility license, the department shall schedule a licensing survey. If the PDHC facility meets the requirements for licensure and the requirements under this Subsection, the department shall issue a notice of reinstatement of the PDHC facility license.

5. No change of ownership in the PDHC facility shall occur until such PDHC facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a PDHC facility.

6. The provisions of this Subsection shall not apply to a PDHC facility which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the PDHC facility license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter I. Physical Environment

§5285. General Requirements

A. The standards in this Subchapter I shall apply to newly constructed PDHC facilities and alterations, additions, or renovations to an existing PDHC facility and to an existing building to create a PDHC facility.

B. Plan Review

1. A PDHC facility must submit architectural plans and specifications to the department's Division of Engineering and Architectural Services and any other documents as the division so requires.

2. A PDHC facility must also submit plans and specifications to the Office of the State Fire Marshal, and any other documents as the OSFM requires.

3. Plans and specifications must be prepared by or under the direction of a licensed architect or qualified engineer and shall include scaled architectural plans stamped by an architect.

4. Approval of such plans by the DHH Division of Engineering and Architectural Services and the OSFM shall be submitted to the Health Standards Section with all new applications for a PDHC facility or with any alterations, additions, or renovations to an existing PDHC facility or to an existing building that will be used to create a new PDHC facility.

5. All PDHC facilities shall comply with the rules, sanitary code and enforcement policies as promulgated by the Office of Public Health. It shall be the primary responsibility of the OPH to determine if applicants are complying with those requirements.

6. The PDHC facility shall have approval for occupancy from the OPH and the OSFM which shall be submitted to the Health Standards Section as part of the application packet. It shall be the responsibility of the PDHC facility to contact the OPH and the OSFM to schedule an onsite visit for each of these offices to verify and grant approval of occupancy.

C. Design Criteria. The project shall be designed in accordance with:

1. the current edition of NFPA 101 Life Safety Code;
2. Part XIV (Plumbing) of the Louisiana State Sanitary Code;
3. the American's with Disabilities Act/Accessibility Guidelines for Buildings and Facilities; and
4. the department's licensing regulations for PDHC facilities.

D. Interior Spaces

1. The PDHC facility shall consist of a building(s) suitable for the purpose intended, and shall have a minimum of 50 square feet of space per child exclusive of kitchen, toilet facilities, storage areas, hallways, stairways, basements and attics.

2. If rooms are used exclusively for dining or sleeping the space shall not be included in the licensed capacity.

3. The PDHC facility shall have sufficient rooms to accommodate and segregate the different age groups being served by the facility.

4. As the child ages, the PDHC facility shall make privacy accommodations for the PDHC facility staff to attend to the personal care needs of the child.

5. The PDHC facility shall have a kitchen or food preparation area designated for the preparation of meals, snacks or prescribed nourishments which shall be maintained in accordance with state and local sanitation and safe food handling standards.

6. Toileting facilities shall be appropriately accessible to persons with disabilities and age appropriate in design and shall contain hand-washing stations.

7. The PDHC facility shall have separate toilet facilities for PDHC staff.

8. There shall be a hand-washing station in each play area, classroom and therapy room or area.

9. The PDHC facility shall have individual labeled space available for each child's personal belongings.

10. There shall be a designated secure area for the storage and preparation of medications.

11. The PDHC facility shall have secure clean storage areas for supplies and equipment.

12. The PDHC facility shall have separate storage areas for clean and soiled linen.

13. The PDHC facility shall have a secure room for the safe storage of janitorial supplies and equipment, poisonous materials, and toxic materials.

a. Poisonous and toxic materials shall be so labeled and identified and placed in cabinets which are used for no other purpose.

14. Areas determined to be unsafe for the child or family shall be secured and locked. These areas would include high voltage areas, equipment rooms, etc.

15. The PDHC facility shall have an area for the safe and secure maintenance and storage of medical records and other facility files, records, and manuals.

16. Garbage, rubbish and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

E. Exterior Spaces

1. The PDHC facility shall have a covered entry. Such roof overhang or canopy shall extend as far as practicable to the face of the driveway or curb of the passenger access door of the passenger vehicle.

2. The PDHC facility shall provide for an outdoor play space with a direct exit from the center into the outdoor play yard.

3. A PDHC facility shall ensure that the structures and the grounds of the facility that are accessible to children are maintained in good repair and are free from hazards to health and safety.

4. Areas determined to be unsafe, including but not limited to steep grades, cliffs, open pits, swimming pools, high voltage boosters, high voltage equipment or high speed roads shall be fenced off or have natural barriers to protect children.

5. Fences shall be in good repair.

6. Garbage, rubbish and trash that is stored outside shall be stored securely in covered containers. Trash collection receptacles and incinerators shall be separate from outdoor recreational space and located as to avoid being a nuisance.

F. Housekeeping, laundry and maintenance services

1. Housekeeping. The center shall maintain a clean and safe facility. The facility shall be free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

2. Laundry. The PDHC facility shall have a supply of clean linen sufficient to meet the needs of the children. Clean laundry shall be provided by a laundry service either in-house, contracted with another health care facility or in accordance with an outside commercial laundry service. Laundry services shall be provided in compliance with OPH requirements. Linens shall be handled, stored, processed and transported in such a manner as to prevent the spread of infection.

3. Maintenance. The premises shall be well kept and in good repair.

a. The center shall insure that the grounds are well kept and the exterior of the building, including the

sidewalks, steps, porches, ramps, and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair.

G. A pest control program shall be in operation and the center's pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. If pest control chemicals are stored in the facility, they shall be kept in a locked location.

H. Heating, Ventilation and Air Conditioning (HVAC)/Ventilation.

1. The facility shall provide safe HVAC systems sufficient to maintain comfortable temperatures with a minimum of 65 degrees and a maximum of 80 degrees Fahrenheit in all public and private areas in all seasons of the year. During warm weather conditions the temperature within the facility shall not exceed 80 degrees Fahrenheit. The HVAC system(s) shall be maintained in good repair.

2. All gas heating units shall bear the stamp of approval of the American Gas Association Testing Laboratories, Inc. or other nationally recognized testing agency for enclosed, vented heaters for the type of fuel used.

3. All gas heating units and water heaters shall be vented adequately to carry the products of combustion to the outside atmosphere. Vents shall be constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with the American Gas Association recommended procedures.

4. All heating units shall be provided with a sufficient supply of outside air so as to support combustion without depletion of the air in the occupied room.

5. The use of portable heaters by the PDHC facility is strictly prohibited.

6. Filters for heaters and air conditioners shall be provided as needed and maintained in accordance with the manufacturer's specifications.

I. Water Supply.

1. An adequate supply of water, under pressure, shall be provided at all times.

2. When a public water system is available, a connection shall be made thereto. If water from a source other than a public water supply is used, the supply shall meet the requirements set forth under these regulations and OPH.

3. A PDHC facility shall have a plan and policy for an alternative water supply in the event of interruption of water supply and for the prolonged loss of water to the facility.

J. Sewage

1. All sewage shall be disposed of by means of either:

a. a public system where one is accessible within 300 feet; or

b. an approved sewage disposal system that is constructed and operated in conformance with the standards established for such systems by OPH.

K. Signage. The facility's address and name shall be displayed so as to be easily visible from the street.

L. Distinct Part Facilities

1. Physical and Programmatic Separation. A PDHC facility shall be both physically and programmatically distinct from any business to which it is attached or of which it is a part.

2. Physical Separation. If more than one business occupies the same building, premises, or physical location, the PDHC facility shall have its own entrance. This separate entrance shall not be accessed solely through another business or health care provider. This separate entrance shall have appropriate signage and shall be clearly identifiable as belonging to the PDHC facility.

3. All spaces licensed as the PDHC facility shall be contiguous. If a PDHC facility has more than one building, protection from the elements shall be provided.

M. Furnishings and Equipment

1. Each PDHC facility shall maintain an age appropriate and developmentally appropriate environment in each of the areas where services are provided to a child.

2. At a minimum each PDHC facility shall provide or arrange to provide the following:

- a. suctioning supplies and equipment to meet the routine or emergency needs of the children;
- b. oxygen supplies and equipment to meet the routine or emergency needs of the children;
- c. pulse oximeter and supplies; and
- d. any supplies or equipment necessary to meet the emergency needs of the children.

3. The PDHC facility shall coordinate with the child and family to ensure that equipment and supplies used by the child are available to the child at the PDHC facility without duplication.

N. Waivers. The secretary of the department may, within his sole discretion, grant waivers to building and construction guidelines.

1. The facility shall submit a waiver request in writing to the Division of Engineering and Architectural Services.

2. The facility shall demonstrate how patient safety and the quality of care offered are not compromised by the waiver.

3. The secretary shall make a written determination of the waiver request.

4. Waivers are not transferrable in an ownership change and are subject to review or revocation upon any change in circumstances to the waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Family Impact Statement

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, and autonomy as described in R.S. 49:972 by assuring the safe operation of facilities that render pediatric day health care services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, October 28, 2009 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 the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

0912#078

RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 28—Variable Contract Regulation
(LAC 37:XIII.Chapter 77)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance has amended the Department's Regulation 28, Variable Contract Regulation, as required to bring it into compliance with the National Association of Insurance Commissioner's (NAIC) uniformity standards. The amendments herein remove the requirement of holding a life insurance producer license in order to obtain the producer license required for selling variable annuity products. The criteria used for the issuance, denial or any other regulatory action authorized under the Louisiana Insurance Code, with regard to the variable annuity license, shall remain the same as that criteria applicable to the life insurance producer license.

Title 37

INSURANCE

Part XIII. Regulations

**Chapter 77. Regulation 28—Variable Contract
Regulation**

§7700. Authority

A. This regulation is adopted and promulgated by the Department of Insurance pursuant to the authority granted by R.S. 22: 781 and the Administrative Procedure Act, R.S. 49:950 et seq. This regulation replaces and repeals the regulation of similar purpose which took effect on January 1, 1969.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1500 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, January 1969, amended LR 24:67 (January 1998), amended LR 35:2781 (December 2009).

§7701. Definition

Company—any insurer which possesses a certificate of authority to conduct life insurance business or annuity business in the state of Louisiana.

Contract on a Variable Basis or Variable Contract—any policy or contract which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in R.S. 22: 781.

Producer—any person, corporation, partnership, or other legal entity which, under the laws of this state, is licensed as an insurance producer.

Variable Contract Producer—a producer who shall sell or offer to sell any contract on a variable basis.