

NOTICE OF INTENT

Department of Health Board of Pharmacy

Pharmacy Change of Ownership (LAC 46:LIII.1135)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Board of Pharmacy hereby gives notice of its intent to amend §1135 of its rules relative to pharmacy change of ownership procedures. The proposed Rule changes limit the circumstances under which

pharmacy owners must obtain a new permit when ownership of the pharmacy is transferred by requiring that an application for a new pharmacy permit is to be filed and a new permit obtained only when there is a change in the identity of the natural person, partnership, or business entity which directly holds the permit or when there is a change in the person or entity's Federal Employer Identification Number (FEIN). The proposed Rule changes require a new application to be filed at least 15 days before closing the transfer of ownership interests, require the application to include the direct and first indirect level of ownership information, and require any change in the first indirect level of ownership of 20 percent or more to be reported to the board within 30 days of the change. The proposed Rule changes clarify that nothing prohibits an entity from applying for a new pharmacy permit in order to separate itself from actions of the previous ownership. The changes also clarify that operation of a permit subsequent to a change of ownership without submission of a new permit application may violate R.S. 37:1221.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter C. Pharmacy Opening, Closing, Change of Ownership, and Change of Location

§1135. Pharmacy Change of Ownership Procedures

A. A pharmacy permit is not transferable.

B. A new application shall be filed and a new permit obtained when a change in the identity of the natural person, partnership, or business entity which directly holds the permit has occurred or there is a change in the person or entity's Federal Employer Identification Number (FEIN).

C. The new owner shall submit an application to the board office at least 15 days before closing the transfer of ownership interests of said business.

D. An application for a new pharmacy permit shall include the direct and first indirect level of ownership information. Any change in the first indirect level of ownership of 20 percent or more must be reported to the board within 30 days of the change.

E. Nothing in this section shall prohibit an entity from applying for a new pharmacy permit in order to separate itself from actions which may have been committed by the previous ownership under the existing pharmacy permit.

F. The continued operation of a pharmacy permit subsequent to a change of ownership, without submission of an application to the board office, may substantiate a violation of R.S. 37:1221.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2092 (October 2003), effective January 1, 2004, amended LR 33:1131 (June 2007), amended LR 49:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The Effect on the Stability of the Family. The proposed rule changes will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed rule changes will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The proposed rule changes will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed rule changes will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. The proposed rule changes will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The proposed rule changes will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed rule.

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The Effect on Household Income, Assets, and Financial Security. The proposed rule changes will have no effect on household income, assets, or financial security.

2. The Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed rule changes will have no effect on early childhood development or preschool through postsecondary education development.

3. The Effect on Employment and Workforce Development. The proposed rule changes will have no effect on employment and workforce development.

4. The Effect on Taxes and Tax Credits. The proposed rule changes will have no effect on taxes or tax credits.

5. The Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. The proposed rule changes will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

Small Business Analysis

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. The proposed rule changes will lessen the requirement to apply for a new pharmacy permit. It will however, require an application for a new pharmacy permit to be submitted at least 15 days before closing the transfer of ownership interests of a pharmacy and will require any change in the first indirect

level of ownership of 20 percent or more to be reported to the Board within 30 days of the change

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. The proposed rule changes will not establish less stringent schedules or deadlines for compliance or reporting requirements for small business. The proposed rule changes will require an application for a new pharmacy permit to be submitted at least 15 days before closing the transfer of ownership interests of a pharmacy and will require any change in the first indirect level of ownership of 20 percent or more to be reported to the Board within 30 days of the change.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. The proposed rule changes will have no effect on consolidation or simplification of compliance or reporting requirements for small business.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards Required in the Proposed Rule. The proposed rule changes will have no effect on establishment of performance standards for small businesses to replace design or operational standards for small business.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses in the proposed rule changes.

Provider Impact Statement

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed rule changes will have no effect on the staffing level requirements or qualifications required to provide the same level of service.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed rule changes will have no effect on the cost to the provider to provide the same level of service.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of service. The proposed rule changes will have no effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to M. Joseph Fontenot Jr., Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendments. The deadline for the receipt of all written comments is 12 p.m. on Friday, May 26, 2023.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule changes is scheduled for 9 a.m. on Friday, May 26, 2023 at the Board office. During the hearing, all

interested persons will be afforded an opportunity to submit comments and testimony, either verbally or in writing. The deadline for the receipt of all comments and testimony is 12 p.m. that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225-925-6496.

M. Joseph Fontenot Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Pharmacy Change of Ownership

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will require the Louisiana Board of Pharmacy (LBP) to publish the proposed and final rules in the state register, resulting in printing expenses of \$750 in FY 2023 and \$750 in FY 2024. There will be no additional expenditures or cost savings to state or local governmental units.

The proposed rule changes limit the circumstances under which pharmacy owners must obtain a new permit when ownership of the pharmacy is transferred by requiring that an application for a new pharmacy permit is to be filed and a new permit obtained only when there is a change in the identity of the natural person, partnership, or business entity which directly holds the permit or when there is a change in the person or entity's Federal Employer Identification Number (FEIN).

The proposed rule changes require a new application to be filed at least 15 days before closing the transfer of ownership interests, require the application to include the direct and first indirect level of ownership information, and require any change in the first indirect level of ownership of 20 percent or more to be reported to the board within 30 days of the change. The proposed rule changes clarify that nothing prohibits an entity from applying for a new pharmacy permit in order to separate itself from actions of the previous ownership. The changes also clarify that operation of a permit subsequent to a change of ownership without submission of a new permit application may violate R.S. 37:1221.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will result in a reduction in revenue collections for the Board of Pharmacy. While the amount of the reduction is indeterminable, it is anticipated to be approximately \$33,000 per year.

The proposed rule will eliminate the need for the vast majority of pharmacy permit applications due to a change of ownership. The application fee for a pharmacy permit is \$500. In addition to the application fee, the applicant must also pay a \$25 controlled substance license fee and a \$25 Prescription Monitoring Program fee, for a total of \$550. Based on historical data, LBP estimates that the proposed rule change will eliminate the need for approximately 60 such applications per year, leading to an expected \$33,000 annual decrease in revenue, though the actual amount will vary depending on the number of applications which are no longer necessary under the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes to §1135 will benefit pharmacies undergoing a change in ownership by eliminating the need for a new pharmacy permit in most circumstances.

Eliminating the need to apply for a permit due to a change of ownership will save the pharmacy \$550 in application fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

The proposed rule changes will have no effect on competition or employment.

M. Joseph Fontenot Jr.
Executive Director
2304#021

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office