NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

<u>Licensing Standards</u> (LAC 48:I.Chapters 56 and 57)

The Department of Health, Bureau of Health Services

Financing proposes to amend LAC 48:I.Chapters 56 and 57 and to

adopt §5733 as authorized by R.S. 36:254. This proposed Rule is

promulgated in accordance with the provisions of the

Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services

Financing proposes to amend the provisions governing the

licensing of behavioral health service (BHS) providers in order

to comply with the requirements of the following Acts of the

2022 Regular Session of the Louisiana Legislature: Act 151

authorizes and provides conditions for licensed BHS providers to

employ peer support specialists who have been convicted of

certain offenses; Act 344 allows BHS providers to operate within

a 50 mile radius of the providers' business offices and within a

50 mile radius of one designated offsite location; Act 390

authorizes BHS providers to furnish services regardless of where

the client or patient is located within the state; and, Act 503

requires updates to the provisions governing psychosocial

rehabilitation services (PSR) and community psychiatric support

and treatment services (CPST). In addition, Act 309 requires the department to adopt provisions establishing requirements for the treatment of opioid use disorder in pregnant women by licensed BHS providers.

In compliance with Acts 151, 344, 390, 503 and 309, the Department of Health, Bureau of Health Services Financing hereby proposes to amend the provisions governing the licensing of BHS providers and to adopt provisions establishing requirements for the treatment of opioid use disorder in pregnant women.

Title 48

PUBLIC HEALTH-GENERAL

Part I. General Administration Subpart 3. Licensing and Certification

Chapter 56. Behavioral Health Service Providers
Subchapter A. General Provisions

Definitions

§5603.

* * *

directed supports and solution focused interventions

intended Centers for Medicare and Medicaid Services (CMS)

approved Medicaid mental health rehabilitation services designed

to reduce disability from mental illness, restore functional

skills of daily living, build natural supports, and achieve

identified person-centered goals or objectives through

counseling, clinical psycho-education, and ongoing monitoring

needs as set forth in the client's an individualized treatment plan. These supports and interventions are designed to improve behavioral health outcomes by utilizing evidence-based driven care.

* * *

Geographic Service Area—the geographic service location for a public or private behavioral health services provider licensed pursuant to this Part shall be defined to include all of the following:

- 1. 2. ...
- 3. any <u>distance_location</u> within a <u>fifty_50</u> mile radius of the provider's business office.

* * *

Off-Site—a parent facility's alternate location or premises that provides behavioral health services on a routine basis within the geographic service area of the licensed BHS provider that:

- 1. ...
- 2. the geographic service location for a public is owned by, leased by or private donated or loaned to the parent provider for the purpose of providing behavioral health services provider licensed pursuant to this Part shall be defined to include:; and
 - a. the parish in which the provider's business

office is located;

- b. any parish contiguous to the parish in which the provider's business office is located; and
- c. any distance within a fifty mile radius of the provider's business officea. c. Repealed.
- 3. is owned by, leased by or donated or loaned to has a sub-license issued under the parent provider for the purpose of providing behavioral health services; and facility's license.
- 4. has a sub-license issued under the parent facility's licenseRepealed.

* * *

Onsite Access—for purposes of §5712 and §5733 of this Rule, the delivery of the treatment to the patient at the location of the residential substance use disorder facility. For purposes of §5712 and §5733, onsite access does—shall not mean that the residential—substance use disorder facility is required to maintain stock of the medication—assisted treatment at the facility.

* * *

Peer Support Specialist—an individual with personal lived experience with a minimum of 12 consecutive months of recovery from behavioral health conditions and successfully navigating the behavioral health services system. Recognized peer support specialists must successfully complete an OBH-approved peer

training program, continuing education requirements, and clinical supervision prior in order to providing provide peer support services.

* * *

intervention with the client CMS approved Medicaid mental health rehabilitation services designed to assist the individual with compensating for or eliminating functional deficits and interpersonal and/or environmental barriers associated with his/her mental illness through skill building and supportive interventions to restore and rehabilitate social and interpersonal skills and daily living skills.

* * *

Substance Use <u>Disorder Facilities</u>/Addiction Treatment

Service—a service related to the screening, diagnosis,

management, or treatment for the use of or addiction to

controlled dangerous substances, drugs or inhalants, alcohol,

problem gambling or a combination thereof; may also be referred

to as substance use disorder service.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1682

(September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1380 (July 2017), LR 46:587 (April 2020), LR 48:1277 (May 2022), LR 48:

Subchapter B. Licensing

§5605. General Provisions

- A. F.3. ...
- G. Off-Sites. A licensed BHS provider may have an off-site location with the approval of HSS that meets the following requirements.
- 1. The off-site may share a name with the parent facility if a geographic indicator (e.g., street, city or parish) is added to the end of the off-site name.
 - 2. 4. ...
- 5. A residential The licensed BHS provider may operate within a 50 mile radius of one designated off-site shall be reviewed under the plan review process location.
- 6. An initial survey may be required prior to opening a A residential off-site shall be reviewed under the plan review process.
- 7. An <u>initial survey may be required prior to</u>

 <u>opening a residential</u> off-site shall have staff to comply with

 <u>all requirements in this Chapter and who are present during</u>

 <u>established operating hours to meet the needs of the clients.</u>
 - 8. Personnel records and client records may be

housed at An off-site shall have staff to comply with all requirements in this Chapter and who are present during established operating hours to meet the parent facility needs of the clients.

- 9. Clients who do not receive all treatment services at an off site may receive the services Personnel records and client records may be housed at the parent facility or be referred to another licensed provider that provides those services.
- 10. The Clients who do not receive all treatment services at an off-site may offer fewer receive the services than the parent facility and/or may have less staff than at the parent facility or be referred to another licensed provider that provides those services.
- 11. The off-site together withmay offer fewer

 services than the parent facility and/or may have less staff

 than the parent facility provides all core functions of a BHS

 provider and meets all licensing requirements of a BHS provider.
- 12. The off-site together with the parent facility provides all core functions of a BHS provider and meets all licensing requirements of a BHS provider.
 - H. L.9. ...
 - M. Geographic Service Area
 - 1. 2.d.i. ...

ii. for providers of outpatient services

(other than providers with a mental health service program that

provide services only in the home and community - see below) the

geographic service area shall be:

(d). in a home or community location in any parish contiguous to the parish in which the BHS provider's primary business office is located, and;

(e). in a home or community location that is within a 50 mile radius of the BHS provider's primary business office; and

(f). in a home or community location that is within a 50 mile radius of one designated off-site location.

- 3. A BHS provider that is not a licensed mental health professional or a provisionally licensed mental health professional acting within his/her scope of practice may not provide telehealth services outside of its geographic service area.
- 4. A licensed mental health professional or a provisionally licensed mental health professional acting within his scope of practice, who is employed by a behavioral health service provider licensed pursuant to this Part, may provide

professional outpatient psychiatric services to any established client or patient, regardless of the client's or patient's particular location within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2162.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1687 (September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1380 (July 2017), LR 46:588 (April 2020), LR 48:1281 (May 2022), LR 48:

§5606. License Restrictions and Exceptions

A. - B.5. ...

C. The provider shall not provide services to a client residing outside of the provider's designated geographic service area unless the provider has received a written waiver request approval from HSS or meets the requirements of Subsection B of this Section.

D.- F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2162.

HISTORICAL NOTE: Promulgated by the Department of
Health, Bureau of Health Services Financing, LR 46:588 (April
2020), amended LR 48:1281 (May 2022), LR 48:

Subchapter E. Personnel

§5641. General Requirements

A. - D.1.b. ...

2. For any provider that is treating adults, prior to any employer making an offer to employ or contract with a nonlicensed person or any licensed person, the provider shall obtain a statewide criminal background check on all unlicensed direct care staff within 90 days prior to hire or employment by an agency authorized by the Office of State Police to conduct criminal background checks in accordance with R.S. 40:1203.1 et seq. The At the latest, the background check shall be conducted within 90 days prior to hire or employment.

D.3. - F. ...

- 1. The provider is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:
- a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving: listed in R.S. 40:1203.3, unless the individual meets one of the exceptions allowed by the statute; or

i. abuse or neglect of a person;

ii. an alcohol or drug offense, unless the employee or contractor has:

(a). completed his/her court-ordered sentence, including community service, probation and/or parole;

and

(b). been sober per personal

attestation for at least the last 2 years;

iii. any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person when:

(a). the offense was within the last five years; or

(b). the employee/contractor has not completed his/her sentence, including, if applicable, probation or parole;

v. a crime of violence; i. - v. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

F.1.b. - J. ...

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1699 (September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

§5643. Core Staffing Personnel Qualifications and Responsibilities

A. - C.1.b.vi. ...

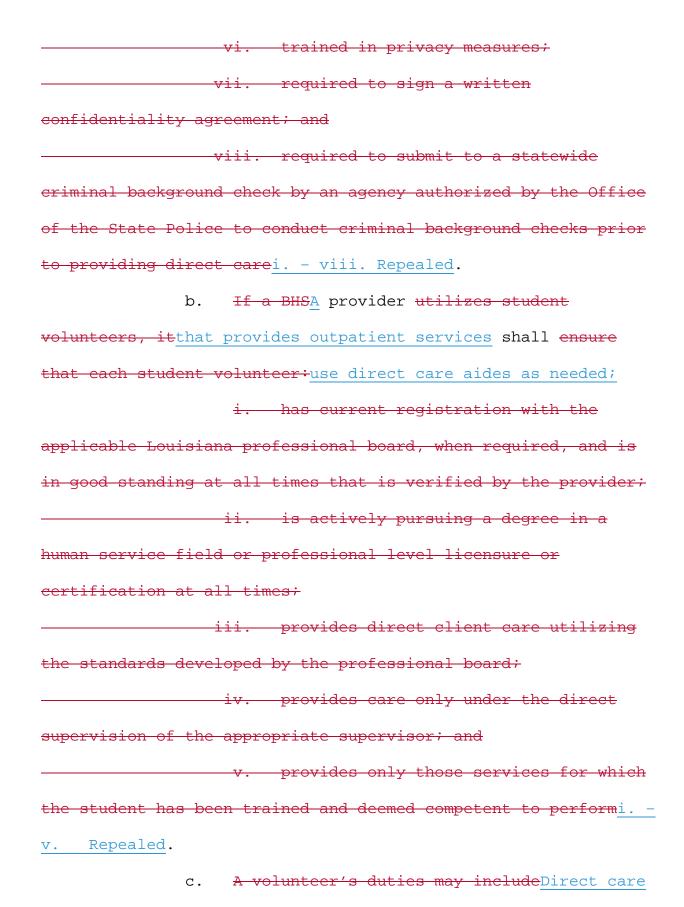
2. Unlicensed CPST Professionals

- a. The provider shall maintain a sufficient number of UPs-CPST professionals to meet the needs of its clients;
 - b. The UPCPST professionals shall:
- i. provide direct care to clients and may
 serve as primary counselor clinician to specified caseload under
 clinical supervision;
 - ii. iv. ...
- v. prepare and write notes or other documents related to recovery (e.g., assessment, progress notes, treatment plans, etc.).
 - 3. Direct Care Aides Unlicensed Professionals
- a. A residential The provider shall have

 maintain a sufficient number of direct care aides UPs to meet the needs of the its clients;
- b. A provider that provides outpatient services The UP shall use direct care aides as needed:
- i. provide direct care to clients and may serve as primary case worker to specified caseload under clinical supervision;
- ii. serve as resource person for other professionals and paraprofessionals in their specific area of expertise;
- iii. attend and participate in individual

care conferences, creatment prainting activities and discharge
planning;
iv. function as the client's advocate in
all treatment decisions affecting the client; and
v. prepare and write notes or other
documents related to recovery (e.g., assessment, progress notes
treatment plans, etc.).
c. Direct care aides shall meet the following
minimum qualifications:
i. has obtained a high school diploma or
equivalent;
ii. be at least 18 years old in an adult
provider and 21 years old in a provider that treats children
and/or adolescents.
d. Direct care aides shall have the following
responsibilities:
i. ensure a safe environment for clients;
ii. exercise therapeutic communication
skills;
iii. take steps to de escalate distressed
clients;
iv. observe and document client behavior;
v. assist with therapeutic and

vi. monitor clients' physical well-being;
vii. provide input regarding client progress
to the interdisciplinary team;
viii. oversee the activities of the facility
when there is no professional staff on duty;
ix. possess adequate orientation and skills
to assess situations related to relapse and to provide access to
appropriate medical care when needed; and
x. function as client advocate c - d.x.
Repealed.
4. Volunteers Direct Care Aides
a. If a BHS provider utilizes volunteers, the A
residential provider shall ensure that each volunteer is: have a
sufficient number of direct care aides to meet the needs of the
<u>clients;</u>
i. supervised to protect clients and
staff;
ii. oriented to the provider, job duties,
and other pertinent information;
iii. trained to meet requirements of duties
assigned;
iv. given a written job description or
written agreement;
v. identified as a volunteer;



aides shall meet the following minimum qualifications:

- i. direct care activities only when qualified provider personnel are present have obtained a high school diploma or equivalent; and
- ii. errands, recreational activities; and be at least 18 years old in an adult provider and 21 years old in a provider that treats children and/or adolescents.
- iii. <u>individual assistance to support</u> services Repealed.
- d. The provider Direct care aides shall designate a volunteer coordinator who have the following responsibilities:
- i. has the experience and training to supervise the volunteers and their activities; and ensure a safe environment for clients;
- ii. is responsible for selecting,
 evaluating and supervising the volunteers and their
 activities.exercise therapeutic communication skills;
 iii. take steps to de-escalate distressed
- clients;
 - iv. observe and document client behavior;
- v. assist with therapeutic and recreational activities;
- vi. monitor clients' physical well-being;

vii. provide input regarding client progres
to the interdisciplinary team;
viii. oversee the activities of the facility
when there is no professional staff on duty;
ix. possess adequate orientation and skill
to assess situations related to relapse and to provide access to
appropriate medical care when needed; and
x. function as client advocate.
5. Care Coordinator Volunteers
a. The If a BHS provider utilizes volunteers,
provider shall ensure that each <u>care coordinator</u> volunteer is:
i. has a high school diploma or
equivalentsupervised to protect clients and staff;
ii. is at least 18 years old in an
adultoriented to the provider, job duties, and 21 years old in
provider that treats children and/or adolescentsother pertinent
information; and
iii.
requirements of duties assigned job duties.
iv. given a written job description or
written agreement;
v. identified as a volunteer;
vi. trained in privacy measures;
vii. required to sign a written

confidentiality agreement; and
viii. required to submit to a statewide
criminal background check by an agency authorized by the Office
of the State Police to conduct criminal background checks prior
to providing direct care.
b. If a BHS provider utilizes student
volunteers, it shall ensure that each student volunteer:
i. has current registration with the
applicable Louisiana professional board, when required, and is
in good standing at all times that is verified by the provider;
ii. is actively pursuing a degree in a
human service field or professional level licensure or
certification at all times;
iii. provides direct client care utilizing
the standards developed by the professional board;
iv. provides care only under the direct
supervision of the appropriate supervisor; and
v. provides only those services for which
the student has been trained and deemed competent to perform.
c. A volunteer's duties may include:
i. direct care activities only when
qualified provider personnel are present;
ii. errands, recreational activities; and
iii individual aggigtange to gunnort

Services.
d. The provider shall designate a volunteer
coordinator who:
i. has the experience and training to
supervise the volunteers and their activities; and
ii. is responsible for selecting,
evaluating and supervising the volunteers and their activities.
6. Care Coordinator
a. The provider shall ensure that each care
coordinator:
i. has a high school diploma or
equivalent;
ii. is at least 18 years old in an adult
provider and 21 years old in provider that treats children
and/or adolescents; and
iii. has been trained to perform assigned
job duties.
D. Multiple Positions. If a BHS provider employs a staff
member in more than one position, the provider shall ensure
<pre>that:</pre>
1. the person is qualified to function in both
capacities; and
2. one person is able to perform the
responsibilities of both jobs.

- E. Multiple Positions. If a BHS provider employs a staff member in more than one position, the provider shall ensure that:
- 1. the person is qualified to function in both capacities; and
- 2. one person is able to perform the responsibilities of both jobsE. E.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1700 (September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1383 (July 2017), LR 48:1283 (May 2022), LR 48:

Subchapter L. Additional Requirements for Mental Health Programs

§5689. Community Psychiatric Support and Treatment

- A. The provider that provides community psychiatric support and treatment (CPST) services shall:
 - 1. 3. ...
- 4. provide individual supportive counseling, solution-focused interventions, emotional and behavioral management and problem behavior analysis with the client; and
 - 5. participates participate in and utilizes utilize

strengths-based planning and treatments, that includes identifying strengths and needs, resources, natural supports and developing goals and objectives to address functional deficits associated with the client's mental illness; and

- 6. provides restoration, rehabilitation and support to develop skills to locate, rent and keep a homeRepealed.
 - B. Staffing Requirements
 - 1. Unlicensed Professionals Providing CPST Services
- a. The program's <u>UPs professionals</u> that provide CPST, except counseling, shall have be one of the following:
- i. a bachelor's degree in social work,
 counseling, psychology or a related human services field_licensed
 mental health professional (LMHP);
- ii. four years of equivalent education in a
 human service fieldprovisionally licensed professional counselor
 (PLPC); or
- iii. four years of qualifying experience
 working with clients who have behavioral health
 disorders.provisionally licensed marriage and family therapist
 (PLMFT);
 - iv. licensed master social worker (LMSW);
 - v. certified social worker (CSW); or
- vi. psychology intern from an American

 Psychological Association approved internship program.

b. The program's UPs that provide counseling responsibilities of any professionals providing CPST services shall have a master's degree in social work, counseling, psychology or a related human services field.include: i. assisting the client with effectively responding to or avoiding identified precursors or triggers that would risk the client remaining in a natural community location; and ii. assisting the client and family members to identify strategies or treatment options associated with the client's mental illness. c. The responsibilities of the UPs, when providing CPST services include: i. assisting the client with effectively responding to or avoiding identified precursors or triggers that would risk the client remaining in a natural community location; ii. assisting in the development of daily living skills specific to managing a home; and iii. assisting the client and family members to identify strategies or treatment options associated with the client's mental illnessc. - c.iii. Repealed.

Licensed Mental Health Professionals

2..

a. - b. ...

assessment and treatment planning components of CPST.

3. - 3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1713 (September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

Subchapter O. Additional Requirement for Substance Opioid Treatment Programs

§5733. Treatment to Pregnant Women

- A. Each substance use disorder facility licensed as an OTP provider that provides treatment for opioid use disorder to pregnant women shall provide onsite access to at least one form of FDA-approved opioid agonist treatment.
- 1. An OTP shall not be found to be in violation of this Section if prior authorization from a patient's health insurer, including the Medicaid program, is required and the preapproval request is denied by the patient's health insurer.
- B. Each OTP that provides treatment for opioid use disorder to pregnant women shall submit to the department, on its initial licensing application or its annual licensing

renewal application, an attestation as to whether it is

complying with the requirements of Subsection A of this Section.

The requirement for submission of the attestation shall commence on January 1, 2023.

1. If the OTP is not fully complying with the requirements of Subsection A of this Section, then the attestation that the OTP submits shall include a report addressing its progress toward satisfying those requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as

described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2022.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary

ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 9, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 29, 2022 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 9, 2022. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary