

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

**Facility Need Review
Behavioral Health Services Providers
(LAC 48:I.Chapter 125)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 125 as authorized by R.S. 36:254 and R.S. 40:2116. 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 facility need review (FNR) process in order to adopt provisions to include behavioral health services providers of psychosocial rehabilitation and/or community psychiatric support and treatment services in the FNR program.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

Behavioral Health Services (BHS)-mental health services, substance abuse/addiction treatment services, or combination of such services, for adults, adolescents and children.

Behavioral Health Services Provider-a facility, agency, institution, person, society, corporation, partnership, unincorporated association, group, or other legal entity that provides behavioral health services or, presents itself to the public as a provider of behavioral health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:135 (January 2015), LR 41:2636 (December 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§12503. General Information

A. - B. ...

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 3. ...

4. hospice providers or inpatient hospice facilities;

5. pediatric day health care facilities; and

6. behavioral health services (BHS) providers that provide psychosocial rehabilitation (PSR) and/or community psychiatric support and treatment (CPST) services.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs/DD, ADHC providers, hospice providers, BHS providers, and pediatric day health care centers that meet one of the following conditions:

1. ...

2. existing licensed ICFs-DD that are converting to the Residential Options Waiver;

3. - 5.c. ...

d. became licensed as a PDHC by the department no later than December 31, 2014;

6. behavioral health services providers that are licensed to provide PSR and/or CPST, or that have submitted a

completed application for licensure as a BHS provider that includes PSR and/or CPST, prior to promulgation of this Rule; and

7. behavioral health services (BHS) providers that fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, that submit a completed BHS provider licensing application by December 1, 2017 and become licensed by April 1, 2018.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 38:1961 (August 2012), LR 41:136 (January 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12524. Behavioral Health Services Providers

A. Except as noted in Paragraph B below, no behavioral health services (BHS) providers or applicants seeking to provide psychosocial rehabilitation (PSR) and/or community psychiatric support and treatment (CPST) services shall be eligible to apply for licensure to provide PSR and/or CPST services unless the FNR Program has granted an approval for the issuance of a BHS provider license for such services. Once the FNR Program approval is granted, a BHS provider is eligible to apply for a BHS provider license to provide PSR and/or CPST services.

B. BHS providers who fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, are required to submit a BHS provider licensing application by December 1, 2017 and become licensed by April 1, 2018.

1. Beginning December 2, 2017, such an "Act 33" BHS provider that failed to submit its completed licensing application by December 1, 2017, shall be subject to FNR and shall not be eligible to apply for licensure to provide PSR and/or CPST services unless the FNR Program has granted an approval for the issuance of a BHS provider license for such services. Once the FNR Program approval is granted, such a BHS provider is eligible to apply for a BHS provider license to provide PSR and/or CPST services.

2. Beginning April 2, 2018, such an "Act 33" BHS provider that submitted its completed licensing application by December 1, 2017, but failed to become licensed by April 1, 2018, shall be subject to FNR and shall not be eligible to apply for licensure to provide PSR and/or CPST services unless the FNR Program has granted an approval for the issuance of a BHS provider license for such services. Once the FNR Program approval is granted, such a BHS provider is eligible to apply for a BHS provider license to provide PSR and/or CPST services.

C. The service area for proposed or existing BHS providers shall be the parish in which the provider is licensed and parishes directly adjacent to said parish.

D. Determination of Need/Approval

1. The department shall review the FNR application to determine if there is a need for an additional BHS provider to provide PSR and/or CPST services in the service area.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access behavioral health PSR and/or CPST services if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other BHS providers providing PSR and/or CPST services in the same geographic location and service area servicing the same population;

b. the number of members that the BHS provider is able to provide PSR and/or CPST services to; and

c. allegations involving issues of access to behavioral health PSR and/or CPST services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access behavioral health PSR and/or CPST services if the provider is not granted approval to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

E. Applications for approvals of BHS providers of PSR and/or CPST services submitted under these provisions are bound to the description in the application with regard to the type of services proposed, as well as to the site and location as defined in the application. FNR approval of such providers shall expire if these aspects of the application are altered or changed.

F. Facility need review approvals for behavioral health PSR and/or CPST applicants are non-transferrable and are limited to the location and the name on the original licensee.

1. A BHS provider of PSR and/or CPST services undergoing a change of location in the same licensed region shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. A BHS provider undergoing a change of location outside of the licensed region shall submit a new completed FNR application and required fee and undergo the FNR approval process.

2. A BHS provider of PSR and/or CPST services undergoing a change of ownership shall submit a new completed application and required fee to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which shall show the seller's or transferor's intent to relinquish the FNR approval.

3. Facility need review approval of a licensed BHS provider of PSR and/or CPST services shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

4. Facility need review approved BHS providers of PSR and/or CPST shall become licensed no later than one year from the date of the FNR approval. Failure to meet any of the time frames in this section shall result in an automatic expiration of the FNR approval of the BHS provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 44:

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

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, December 28, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Cedric E Clark Dept.: Health
Phone: 342-2339 Office: Bureau of Health Services
Financing

Return P.O. Box 91030
Address: Baton Rouge, LA Rule Title: Facility Need Review
Behavioral Health
Services Providers

Date Rule Takes Effect: February 20, 2018

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$1,080 (SGF) will be expended in FY 17-18 for the state's administrative expense for the promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the facility need review (FNR) process in order to adopt provisions to include behavioral health services providers of psychosocial rehabilitation and/or community psychiatric support and treatment services in the FNR program. It is anticipated that the implementation of this proposed rule will have no economic costs to behavioral health services providers for FY 17-18, 18-19 and 19-20, but may limit the number of providers approved for licensure to provide psychosocial rehabilitation and/or community support and treatment services in the future.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello
Signature of Agency Head
or Designee

Cecile Castello,
Health Standards Section Director
Typed name and Title of
Agency Head or Designee

Shrey V. Chhabra
Legislative Fiscal Officer
or Designee

11-8-17
Date of Signature

Bhashkar Joodi
LDH/BHSF Budget Head

11/08/17
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the provisions governing the facility need review (FNR) process in order to adopt provisions to include behavioral health services providers of psychosocial rehabilitation and/or community psychiatric support and treatment services in the FNR program.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the facility need review (FNR) process in order to adopt provisions to include behavioral health services providers of psychosocial rehabilitation and/or community psychiatric support and treatment services in the FNR program.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$1,080 will be expended in FY 17-18 for the state's administrative expense for the promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 17-18	FY 18-19	FY 19-20
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,080	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$1,080	\$0	\$0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 17-18, \$1,080 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	\$1,080	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$0	\$0	\$0
OTHER (Specify)			
Total	\$1,080	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
Total			

*Specify the particular fund being impacted

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule amends the provisions governing the facility need review (FNR) process in order to adopt provisions to include behavioral health services providers of psychosocial rehabilitation and/or community psychiatric support and treatment services in the FNR program.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that the implementation of this proposed rule will have no economic costs to behavioral health services providers for FY 17-18, 18-19 and 19-20, but may limit the number of providers approved for licensure to provide psychosocial rehabilitation and/or community support and treatment services in the future.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.