

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
and
Office of Behavioral Health**

**Behavioral Health Services
Substance Use Disorders Services
(LAC 50:XXXIII.Chapters 141-147)**

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.Chapters 141-147 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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 and the Office of Behavioral Health (OBH) propose to amend the provisions governing substance use disorders (SUD) services rendered to children and adults in order to: 1) reflect the coordinated system of care contractor moving from a non-risk contract to a full-risk capitated contract; 2) remove the requirements for OBH certification of providers and for prior approval of SUD services; 3) clarify the exclusion criteria for institutes for mental disease; and 4) clarify the requirements for residential addiction treatment facilities.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXXIII. Behavioral Health Services
Subpart 15. Substance Use Disorders Services

Chapter 141. General Provisions

§14101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for substance use disorders (SUD) services rendered to children and adults. These services shall be administered under the authority of the Department of Health (LDH), in collaboration with managed care organizations (MCOs) and the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery. The CSoC contractor shall only manage specialized behavioral health services for children and youth enrolled in the CSoC program.

B. ...

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 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015), amended by the

Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:

Chapter 143. Services

§14301. General Provisions

A. ...

B. American Society of Addiction Medicine (ASAM) levels of care require reviews on an ongoing basis, as deemed necessary by the department to document compliance with national standards.

C. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody. Coordination with other child-serving systems should occur as needed to achieve the treatment goals. All coordination must be documented in the child's medical record.

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must approve the provision of services to the recipient.

D. Children who are in need of SUD services shall be served within the context of the family and not as an isolated unit.

1. Services shall be:

a. delivered in a culturally and linguistically competent manner; and

b. respectful of the individual receiving services.

2. Services shall be appropriate to individuals of diverse racial, ethnic, religious, sexual, and gender identities, and other cultural and linguistic groups.

3. Services shall also be appropriate for:

- a. age;
- b. development; and
- c. education.

E. Evidence-based practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by the department.

E.1. - F. Repealed.

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 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:

§14303. Covered Services

A. - A.3. ...

B. Service Exclusions. The following services/components shall be excluded from Medicaid reimbursement:

1. - 3. ...

4. services rendered in an institute for mental disease unless provided through Code of Federal Regulations "allowed in lieu of", or a U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved waiver; and

5. ...

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 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:

Chapter 145. Provider Participation

§14501. Provider Responsibilities

A. - C. ...

D. Anyone providing SUD services must be licensed in accordance with state laws and regulations, in addition to operating within their scope of practice license. Providers

shall meet the provisions of this Rule, the provider manual and the appropriate statutes.

E. Residential addiction treatment facilities shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to the MCO in writing within the time limit established by the department.

F. - F.6. ...

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 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:

Chapter 147. Reimbursement

§14701. General Provisions

A. For recipients enrolled with the CSoC contractor, the department or its fiscal intermediary shall make monthly capitation payments to the CSoC contractor, exclusive of coverage for residential substance use treatment services.

1. The capitation rates paid to the CSoC contractor shall be actuarially sound rates.

2. The CSoC contractor will determine the rates paid to its contracted providers.

a. No payments shall be less than the minimum Medicaid rate.

B. For recipients enrolled in one of the MCOs, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs inclusive of coverage for the provision of residential substance use services for recipients enrolled in CSoC.

1. The capitation rates paid to the MCOs shall be actuarially sound rates.

2. The MCOs will determine the rates paid to its contracted providers.

a. No payment shall be less than the minimum Medicaid rate.

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 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:3301 (December 2013), LR 41:2358

(November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:

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.

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.

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, 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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele 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

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Address: Baton Rouge, LA

Rule Title: Behavioral Health Services

Substance Use Disorders Services

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.

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

I. *It is anticipated that 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 \$972 (\$486 SGF and \$486 FED) will be expended in FY 17-18 for the state's administrative expense for 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 have no effect on revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$486 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing substance use disorders (SUD) services rendered to children and adults in order to: 1) reflect the coordinated system of care contractor moving from a non-risk contract to a full-risk capitated contract; 2) remove the requirements for Office of Behavioral Health certification of providers; 3) remove blanket requirement for prior authorization of SUD services; 4) clarify the exclusion criteria for institutes for mental disease; and 5) clarify the requirements for residential addiction treatment facilities. It is anticipated that implementation of this proposed rule will have no fiscal impact to behavioral health providers of SUD services for FY 17-18, FY 18-19 and FY 19-20. The current payments made to the CSoC contractor are the basis of the capitated rate development for the full-risk contract. Shifting the payment mechanism is not anticipated to have more than a nominal impact on the overall cost of the wavier program, given its maturity, since the program itself will remain substantially the same. The change to prior authorizations is not anticipated to have any direct impact on members or providers, as it is a technical change to align with current practice.

V. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Drey
Signature of Agency Head
or Designee

Shrey V. Albert
Legislative Fiscal Officer
or Designee

Ben Steele, Medicaid Director
Typed name and Title of
Agency Head or Designee

11/9/2017
Date of Signature

Bhaskar Jodl
LDH/BHSF Budget Head

10/05/17
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 substance use disorders (SUD) services rendered to children and adults in order to: 1) reflect the coordinated system of care contractor moving from a non-risk contract to a full-risk capitated contract; 2) remove the requirements for Office of Behavioral Health certification of providers; 3) remove blanket requirement for prior authorization of SUD services; 4) clarify the exclusion criteria for institutes for mental disease; and 5) clarify the requirements for residential addiction treatment facilities.

- 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 and the Office of Behavioral Health (OBH) propose to amend the provisions governing substance use disorders (SUD) services rendered to children and adults in order to: 1) reflect the coordinated system of care contractor moving from a non-risk contract to a full-risk capitated contract; 2) remove the requirements for OBH certification of providers and for prior approval of SUD services; 3) clarify the exclusion criteria for institutes for mental disease; and 4) clarify the requirements for residential addiction treatment facilities.

- 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 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 \$972 will be expended in FY 17-18 for the state's administrative expense for 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	\$972	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$972	\$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, \$972 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	\$486	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$486	\$0	\$0
OTHER (Specify)			
Total	\$972	\$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	\$486	\$0	\$0
LOCAL FUNDS			
Total	\$486	\$0	\$0

**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.

In FY 17-18, \$486 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

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 substance use disorders (SUD) services rendered to children and adults in order to: 1) reflect the coordinated system of care contractor moving from a non-risk contract to a full-risk capitated contract; 2) remove the requirements for Office of Behavioral Health certification of providers; 3) remove blanket requirement for prior authorization of SUD services; 4) clarify the exclusion criteria for institutes for mental disease; and 5) clarify the requirements for residential addiction treatment facilities.

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

It is anticipated that implementation of this proposed rule will have no fiscal impact to behavioral health providers of SUD services for FY 17-18, FY 18-19 and FY 19-20. The current payments made to the CSoc contractor are the basis of the capitated rate development for the full-risk contract. Shifting the payment mechanism is not anticipated to have more than a nominal impact on the overall cost of the wavier program, given its maturity, since the program itself will remain substantially the same. The change to prior authorizations is not anticipated to have any direct impact on members or providers, as it is a technical change to align with current practice.

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.