



State of Louisiana
Louisiana Department of Health
Office of the Secretary

March 10, 2020

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD *By Cindy Russo for*
Interim Secretary

Re: Second Report on Proposed Amendments to LAC 50:III.10905) – Medicaid Eligibility – Transfer of Assets

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Medicaid Eligibility rule amendment.

A Notice of Intent on the proposed amendments was published in the January 20, 2019 issue of the *Louisiana Register* (LR 46:96). No written comments or requests for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the January 20, 2019, Notice of Intent when it is published as a final rule in the April 20, 2020, issue of the *Louisiana Register*.

Please contact Jen Katzman, Deputy Medicaid Director at jennifer.katzman@la.gov, if you have any questions or require additional information about this matter.

Cc: Jen Katzman, Deputy Medicaid Director, Louisiana Department of Health
Veronica Dent, Medicaid Program Manager, Policy and Waivers
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Medicaid Eligibility Transfers of Assets (LAC 50:III.10905)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:III.10905 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) issued revised guidance which allows the penalty period for individuals applying for, or receiving, home and community-based services (HCBS) who transfer assets for less than fair market value to begin on the date on which the individual is eligible for Medicaid and would otherwise be receiving HCBS. In compliance with CMS requirements, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing transfers of assets in the Medical Assistance Program to allow for the imposition of a penalty period for individuals applying for, or receiving HCBS, who transfer assets for less than fair market value.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 5. Financial Eligibility

Chapter 109. Transfers of Assets

§10905. Transfers

A. - B. ...

C. For transfers of assets for less than fair market value, the period of ineligibility for ~~long-term care vendor payment~~ is an individual in a long term care facility begins the ~~latter~~ later of the first day of the month after which the asset was transferred for less than fair market value or the date on which the individual is eligible for ~~long-term care~~ Medicaid assistance and is receiving institutional level of care services (based on an approved application for such services) that, + but for the imposition of the penalty, being applied, would be covered by Medicaid.

1. ...

D. For transfers of assets for less than fair market value, the ~~penalty~~ period of ineligibility for an individual applying for, or receiving, home and community-based services (HCBS) waiver ~~recipients-services~~ begins with the later of the first day of the month ~~during~~ after which ~~assets have been~~ the asset was transferred for less than fair market value or the date on which it is determined that the individual ~~is~~ ineligible meets the financial and non-financial requirements for

Medicaid ~~long-term care assistance~~ eligibility and ~~is receiving~~
~~long-term care services (nursing facility and ICF/MR or HCBS~~
~~services) that would be covered by Medicaid, except for~~
~~imposition of the penalty~~ all other requirements for admission to
an HCBS waiver are met.

E. - G.13.a. ...

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, Office of the Secretary, Bureau of Health
Services Financing, LR 34:1411 (July 2008), amended by the
Department of Health, Bureau of Health Services Financing, LR
46:

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 effect on family functioning,
stability and autonomy as described in R.S. 49:972 since
individuals seeking waiver services may be eligible for these
services sooner.

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 a no impact on child, individual, or family poverty in in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:965.2 et seq.

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 Erin Campbell, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Campbell is responsible for responding to inquiries regarding this proposed Rule. The

deadline for submitting written comments is at 4:30 p.m. on February 29, 2020.

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 February 10, 2020. 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 February 27, 2020 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 February 10, 2020. 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.

Rebekah E. Gee MD, MPH

Secretary



State of Louisiana
Louisiana Department of Health
Office of the Secretary

March 10, 2020

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: *By Cindy Rivers for*
Stephen R. Russo, JD
Interim Secretary

Re: Second Report on Proposed Amendments to LAC 48:I.5603, 5605, and 5606 –
Behavioral Health Service Providers Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Health Standards Section, submits its second report regarding the proposed – Hospice Licensing Standards rule amendment. A Notice of Intent on the proposed amendments was published in the January 20, 2019, issue of the *Louisiana Register* (LR 45:94). Written comments were received during the public comment period and an agency response was issued to the comments. A public hearing was held on February 27, 2020, a person from the public attended the hearing, however, no oral testimony was given at the hearing. Additionally, no substantive changes were made to the proposed amendments since the report provided for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the January 20, 2020, Notice of Intent as a final rule when it is published in the April 20, 2020, issue of the *Louisiana Register*.

Should you have any questions or need additional information, please contact Brenda Blanchard, BSN, RN, LNCC at (225) 342-2471 or Cecile Castello, BSN, RN, LDH Deputy Assistant Secretary, Health Standards Section, at (225) 342-4997.

Cc: Brenda Blanchard, BSN, RN, LNCC, Health Standards Section
Cecile Castello, BSN, RN, LDH Deputy Assistant Secretary, Health Standards Section
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
Behavioral Health Service Providers
Licensing Standards
(LAC 48:I.5603,5605, and 5606)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.5603 and §5605 and adopt §5606 as authorized by R.S. 36:254 and R.S. 40:2151-2162. 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 standards for behavioral health service providers in order to provide further definitions and provisions related to geographic service area and to update the facility need approval definition to align with current practice regarding the requirement for a letter of approval from the Facility Need Review Committee for applicants who seek to provide psychosocial rehabilitation or community psychiatric support and treatment services.

Title 48

**PUBLIC HEALTH-GENERAL
Part 1. General Administration
Subpart 3. Licensing**

Chapter 56. Behavioral Health Service Providers

Subchapter A. General Provisions

§5603. Definitions

* * *

Facility Need Approval (FNA)—the letter of approval from the Office of Behavioral Health which is required for licensure applicants for opioid treatment programs prior to applying for a BHS provider license or the letter of approval from the Facility Need Review Committee within the department which is required for licensure applicants for PSR or CPST services prior to applying for a BHS provider license.

* * *

Geographic Service Area—the geographic area and location that a BHS provider's license allows services to be provided; for purposes of this licensing rule, geographic service area shall be as follows:

1. for providers operated by a human service district or authority, the geographic service area shall be the parishes and jurisdiction of the district or authority as defined in statute; and

2. for all other BHS providers, the geographic service area shall be the parish in which that provider has its business office and any contiguous parishes.

* * *

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 41:1682 (September 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1380 (July 2017), LR 46:

Subchapter B. Licensing

§5605. General Provisions

A. - B. ...

C. A BHS provider license shall:

1. - 4. ...

5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; ~~and~~

6. be posted in a conspicuous place on the licensed premises at all times-~~i~~

7. be valid for only one geographic service area;
and

8. enable the BHS provider to render delineated behavioral health services within its geographic service area as defined in Section 5603.

D. - G.3. ...

4. The off-site shall operate ~~either~~within the same geographic service area, as defined in Section 5603, as the parent facility.

~~a. in the same or adjacent parish as the parent facility; or~~

~~b. for providers operated by a human service district or authority, within the jurisdiction of the district or authority.~~ a. - b. Repealed.

G.5. - L.9. ...

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:

§5606. License Restrictions

A. A BHS provider shall provide only those services or modules:

1. specified on its license; and
2. only to clients residing in the provider's designated geographic service area or at the provider's licensed location.

B. A BHS provider may apply for a waiver from the Health Standards Section (HSS) to provide home or community services to a client residing outside of the provider's designated geographic service area only under the following conditions:

1. A waiver may be granted by HSS if there is no other BHS provider in the client's service area that is licensed and that has the capacity to provide the required services to the client.

2. The provider shall submit a written waiver request to HSS.

3. The written waiver request shall be specific to one client and shall include the reasons for which the waiver is requested.

4. HSS shall approve or deny the waiver request within 30 days of receipt of the written waiver request, and shall provide written notice to the provider via mail or electronic transmission (email or facsimile).

5. The provider shall notify the client of HSS's decision.

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.

D. There is no appeal from a decision by HSS to deny a waiver request under this Section.

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:

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:965.2 et seq.

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, 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.

Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on February 29, 2020.

The department will conduct a public hearing at 9:30 a.m. on February 27, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. 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.

Rebekah E. Gee MD, MPH

Secretary



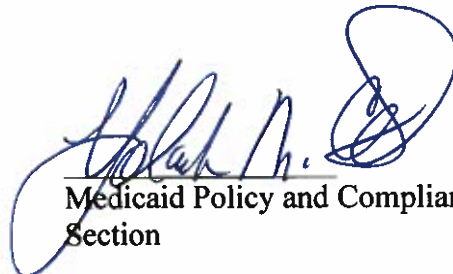
State of Louisiana
Louisiana Department of Health
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
February 27, 2020
9:30 a.m.

RE: Behavioral Health Service Providers
Licensing Standards
Docket # 02272020-01
Department of Health
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on February 27, 2020 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.


Medicaid Policy and Compliance
Section

02/27/20

Date

LDH/BHSF PUBLIC HEARING

Topic – Behavioral Health Service Providers – Licensing Standards

Date – February 27, 2020

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Carol Jenkins	628 N 4th St BR LA 70802	225-342-6943	LDH
2. Shane Waite	628 N 4th St 1102 Commercial PR. Hammond LA 70403	985-662-3799	Increasing Kane B.H.
3.	628 N. 4th St.		
Janece Vaughn	BR LA 70802 628 N. 4th St.	225-342-2207	LDH/HHS
4. Kisha Thomas.	BR LA 70802	225-342-2563	LDH-OBH.
5. Christina Roberts	11	225-342-7000	LDH-legal
6.			

LDH/BHSF PUBLIC HEARING

Topic - Behavioral Health Service Providers - Licensing Standards

Date - February 27, 2020

Name	Address	Telephone Number	AGENCY or GROUP you represent
7. Therese Bryan	628 N 4 th St. BR LA 70802	225 342 2335	LDH
8.			
9.			
10.			
11.			
12.			

Proposed Rule: Behavioral Health Services Providers – Licensing Standards
Public Hearing Date: 02/27/20
Docket No. : 02202020-01
Conducted By: Louisiana Department of Health, Bureau of Health Services Financing Staff

[illegible]



State of Louisiana
Louisiana Department of Health
Bureau of Health Services Financing

March 5, 2020

Matthew Thornton, Ph.D., LPC-S, LMFT-S
Chief Executive Officer
Center for Children and Families, Inc.
622 Riverside Drive
P.O. Box 9493
Monroe, LA 71211-9493

Dear Dr. Thornton:

RE: Proposed Rule for Behavioral Health Service Providers Licensing Standards

This letter is in response to your correspondence regarding the Notice of Intent for Behavioral Health Service Providers – Licensing Standards which was published in the January 20, 2020 edition of the *Louisiana Register*.

I would like to thank you for taking the time to submit comments relative to this proposed Rule which amends the licensing standards for behavioral health service providers to provide further definitions and provisions related to geographic service area and aligns the facility need review approval definition with current practice for psychosocial rehabilitation or community psychiatric support and treatment services.

Your concerns regarding "*the waiver process for home or community-based service to clients outside the designated geographic service on an individual basis*" have been reviewed by various entities within the Louisiana Department of Health. After giving due consideration to the issues noted in your correspondence, the decision has been made to continue with the provisions of the January 20, 2020 Notice of Intent as published in the *Louisiana Register*.

We appreciate your willingness to provide comments regarding these proposed amendments to the behavioral health service providers licensing provisions and hope that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens. Should you have any questions regarding rulemaking activity relative

Matthew Thornton Response
March 5, 2020
Page 2

to the health care licensing standards or Medicaid administrative rulemaking, you may contact Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Respectfully,

A handwritten signature in blue ink, appearing to read "Cecile Castello".

Cecile Castello, BSN, RN
Deputy Assistant Secretary
Health Standards Section

CC/JK/VYD

c: Allen Enger, LDH Rulemaking Coordinator
Kimberly Humbles, LDH General Counsel
Jennifer Katzman, Medicaid Deputy Director