

NOTICE OF INTENT

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

Children's and Adult Mental Health Services
(LAC 50:XXXIII.Chapters 23, 61, 63, and 65)

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.Chapters 23, 61, 63, and 65 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 propose to amend the provisions governing children's and adult mental health services to expand the mental health professionals eligible to provide therapeutic services to include provisionally licensed professional counselors, provisionally licensed marriage and family therapists, and licensed master social workers.

Title 50**PUBLIC HEALTH—MEDICAL ASSISTANCE****Part XXXIII. Behavioral Health Services****Subpart 3. Children's Mental Health Services****Chapter 23. Services****§2301. General Provisions**

A. All specialized behavioral health services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health professional (LMHP) or physician who is acting within the scope of his/her professional license and applicable state law.

B. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and, for children in state custody, the custodial agency. 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 youth in state custody must request and approve the provision of services to the recipient.

C. Children who are in need of specialized behavioral health services shall be served within the context of the family and not as an isolated unit.

1. - 1.b....

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

C.3.c. - D. ...

E. Services may be provided at a site-based facility, in the community, or in the individual's place of residence as outlined in the treatment plan.

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 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2358 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1892 (October 2018), LR 50:

§2303. Covered Services

A. The following behavioral health services shall be reimbursed under the Medicaid Program:

1. therapeutic services delivered by licensed mental health professionals (LMHP), provisionally licensed professional counselors (PLPC), provisionally licensed marriage and family therapists (PLMFT), or licensed master social workers (LMSW);

A.2. - B.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 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2359 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1892 (October 2018), LR 50:

Subpart 7. Adult Mental Health Services**Chapter 61. General Provisions****§6103. Recipient Qualifications**

A. Individuals 21 years of age and older who meet Medicaid eligibility shall qualify to receive adult mental health services referenced in LAC 50:XXXIII.6307 if medically necessary in accordance with LAC 50:I.1101, if the recipient presents with mental health symptoms that are consistent with a diagnosable mental disorder, and the services are therapeutically appropriate and most beneficial to the recipient.

B. - C. ...

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 38:358 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), LR 46:794 (June 2020), repromulgated LR 46:951 (July 2020), amended LR 50:

Chapter 63. Services**§6301. General Provisions**

A. All mental health services must be medically necessary, in accordance with the provisions of LAC 50:I.1101. The medical necessity for services shall be determined by a licensed mental health professional or physician who is acting within the scope of his/her professional license and applicable state law.

B. - C.3.c. ...

D. Anyone providing mental health services must operate within their license and scope of practice.

E. - F. ...

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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), repromulgated LR 46:952 (July 2020), amended LR 50:

§6303. Assessments

A. Assessments shall be performed by a licensed mental health professional (LMHP), provisionally licensed professional counselor (PLPC), provisionally licensed marriage and family therapist (PLMFT), or licensed master social worker (LMSW).

B. Assessments for community psychiatric support and treatment (CPST) and psychosocial rehabilitation (PSR) must be performed by a fully licensed mental health professional at least once every 365 days or any time there is significant change to the enrollee's circumstances.

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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), amended LR 46:795 (June 2020), repromulgated LR 46:952 (July 2020), amended LR 50:

§6305. Treatment Plan

A. - B.1. ...

C. The treatment plan shall be developed by the licensed mental health professional (LMHP) in collaboration with direct care staff, the recipient, family and natural supports.

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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), LR 46:795 (June 2020), repromulgated LR 46:951 (July 2020), amended LR 50

§6307. Covered Services

A. The following mental health services shall be reimbursed under the Medicaid Program:

1. therapeutic services delivered by licensed mental health professionals (LMHPs), provisionally licensed professional counselors (PLPC), provisionally licensed marriage and family therapists (PLMFT), or licensed master social workers (LMSW), and physicians;

A.2. - B.3. ...

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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:61 (January 2016), amended by the

Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1015 (June 2018), LR 46:795 (June 2020), repromulgated LR 46:952 (July 2020), amended LR 46:1680 (December 2020), LR 48:1098 (April 2022), LR 50:

Chapter 65. Provider Participation

§6501. Provider Responsibilities

A. ...

B. Providers shall deliver all services in accordance with their license and scope of practice, with federal and state laws and regulations, the provisions of this Rule, the provider manual and other notices or directives issued by the department. The provider shall create and maintain documents to substantiate that all requirements are met.

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 38:360 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1015 (June 2018), LR 46:795 (June 2020), repromulgated LR 46:952 (July 2020), amended LR 50:

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.

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 impact on family functioning, stability and autonomy as described in R.S. 49:972, as it will increase access to mental health professionals eligible to provide therapeutic services.

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 a positive impact on small businesses, as it allows certain mental health professionals to be reimbursed for therapeutic services they were previously not eligible to provide to Medicaid beneficiaries.

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, but may have a positive impact on the direct or indirect cost to the provider, and on the provider's ability to provide the same level of service as described in HCR 170, as it allows certain mental health professionals to be reimbursed for

mental health therapeutic services they were previously not eligible to provide to Medicaid beneficiaries.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 30, 2024.

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 May 10, 2024. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 30, 2024 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 May 10, 2024. 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.

Ralph L. Abraham, M.D.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Children's and Adult Mental Health Services

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

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 23-24. The proposed rule adds provisionally licensed mental health professionals (PLMHPs) and licensed master social workers (LMSWs) to the professionals eligible to render therapeutic services; however, these PLMHPs and LMSWs are paid at a lesser rate than the current licensed mental health professionals (LMHPs) workforce, which has continued to decrease over time. As such, the expansion of eligible providers is projected to be budget neutral due to this continued decline in the higher paid LMHPs, along with the anticipated lower utilization of services rendered by these providers. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule amends the provisions governing children's and adult mental health services to expand the mental health professionals eligible to provide therapeutic services to include provisionally licensed mental health professionals and licensed master social workers.

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 23-24. It is anticipated that \$594 will be collected in FY 23-24 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing children's and adult mental health services to expand the mental health professionals eligible to provide therapeutic services to include provisionally licensed professional counselors (PLPC), provisionally licensed marriage and family therapists (PLMFT), and licensed master social workers (LMSW). The proposed rule will allow Medicaid beneficiaries to receive mental health therapeutic services from PLPCs, PLMFTs, and LMSWs and will permit these mental health professionals to be reimbursed for services they were previously not eligible to provide. It is anticipated that implementation of this proposed rule will not result in costs to providers and small businesses in FY 23-24, FY 24-25, and FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.

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