

NOTICE OF INTENT

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

**Applied Behavior Analysis-Based Therapy Services
Reimbursement Rate Realignment
(LAC 50:XV.703)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.703 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 and Hospitals, Bureau of Health Services Financing adopted provisions to establish coverage and reimbursement for applied behavior analysis (ABA)-based therapy services under the Medicaid State Plan in order to ensure continued, long-lasting access to ABA-based therapy services for Chisholm class members and other children under the age of 21 (*Louisiana Register*, Volume 41, Number 5).

The Department of Health, Bureau of Health Services Financing, promulgated an Emergency Rule which amended the reimbursement methodology governing ABA-based therapy services in order to realign the reimbursement rates to be consistent with the commercial rates for these services which will be in effect statewide in January 2017 (*Louisiana Register*, Volume 42, Number 12). This proposed Rule is being promulgated to continue

the provisions of the January 1, 2017 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Applied Behavior Analysis-Based Therapy Services

Chapter 7. Reimbursements

§703. Reimbursement Methodology

A. Reimbursement for ABA-based therapy services shall be based upon a percentage of the commercial rates for ABA-based therapy services in the state of Louisiana.

B. Effective for dates of service on or after January 1, 2017, ABA rates and codes in effect on December 31, 2016 will be realigned to be consistent with the commercial rates in the state related to these codes which go into effect statewide on January 1, 2017.

1. Prior authorizations already in effect on the promulgation date of these provisions will be honored. Those services shall be paid at the rate in effect on December 31, 2016.

2. New prior authorizations with a begin date after the promulgation date of these provisions must use the codes in effect prior to January 1, 2017 for those services provided and to be delivered prior to January 1, 2017, and for any services provided after January 1, 2017, the codes in effect on January 1, 2017 must be used.

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 41:928 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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 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, but may increase direct or indirect cost to the provider to provide the same level of service due to the realignment with commercial rates which may reduce Medicaid payments for these services. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the reduction in payments adversely impacts the provider's financial standing.

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, January 26, 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

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Rule Title: Applied Behavior Analysis-Based
Therapy Services - Reimbursement
Rate Realignment

Date Rule Takes Effect: January 1, 2017

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 result in estimated state general fund programmatic savings of \$1,362,130 for FY 16-17, \$3,449,760 for FY 17-18 and \$8,812,604 for FY 18-19. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 16-17 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.26 percent in FY 16-17 and 63.34 percent in FY 17-18 and 18-19.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$2,247,259 for FY 16-17, \$6,046,775 for FY 17-18 and \$15,226,140 for FY 18-19. It is anticipated that \$216 will be expended in FY 16-17 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.26 percent in FY 16-17 and 63.34 percent in FY 17-18 and 18-19.

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

This proposed Rule continues the provisions of the January 1, 2017 Emergency Rule which amended the reimbursement methodology governing Applied Behavior Analysis (ABA)-Based therapy services in order to realign the reimbursement rates to be consistent with the commercial rates for these services which will be in effect statewide in January 2017. The realignment is expected to reduce Medicaid payments for ABA-Based therapy services. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid program for ABA-based therapy services by approximately \$3,609,821 for FY 16-17, \$9,546,535 for FY 17-18 and \$24,038,744 for FY 18-19.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, the change in reimbursement methodology may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.



Signature of Agency Head
or Designee

Evan Brasseal, Staff Director

Legislative Fiscal Officer
or Designee

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

12/9/16

Date of Signature

Bhaskar Indri

DHH/BHSF Budget Head

12/09/16

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 continues the provisions of the January 1, 2017 Emergency Rule which amended the reimbursement methodology governing Applied Behavior Analysis-Based therapy services in order to realign the reimbursement rates to be consistent with the commercial rates for these services which will be in effect statewide in January 2017.

- 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 and Hospitals, Bureau of Health Services Financing adopted provisions to establish coverage and reimbursement for applied behavior analysis (ABA)-based therapy services under the Medicaid State Plan in order to ensure continued, long-lasting access to ABA-based therapy services for Chisholm class members and other children under the age of 21 (Louisiana Register, Volume 41, Number 5).

The Department of Health, Bureau of Health Services Financing, promulgated an Emergency Rule which amended the reimbursement methodology governing ABA-based therapy services in order to realign the reimbursement rates to be consistent with the commercial rates for these services which will be in effect statewide in January 2017 (Louisiana Register, Volume 42, Number 12). This proposed Rule is being promulgated to continue the provisions of the January 1, 2017 Emergency Rule.

- 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.

This proposed rule will result in a reduction in program expenditures for ABA-based therapy services by approximately \$3,609,389 for FY 16-17, \$9,546,535 for FY 17-18 and \$24,038,744 for FY 18-19. In FY 16-17, \$432 is included 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 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 16-17	FY 17-18	FY 18-19
PERSONAL SERVICES			
OPERATING EXPENSES	\$432	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	(\$3,609,821)	(\$9,546,535)	(\$24,038,744)
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	(\$3,609,389)	(\$9,546,535)	(\$24,038,744)

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.

The expenses reflected above are the estimated reductions in program expenditures for ABA-based therapy services. In FY 16-17, \$432 is included 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 16-17	FY 17-18	FY 18-19
STATE GENERAL FUND	(\$1,362,130)	(\$3,499,760)	(\$8,812,604)
SELF-GENERATED			
FEDERAL FUND	(\$2,247,259)	(\$6,046,775)	(\$15,226,140)
OTHER (Specify)			
Total	(\$3,609,389)	(\$9,546,535)	(\$24,038,744)

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 16-17	FY 17-18	FY 18-19
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	(\$2,247,259)	(\$6,046,775)	(\$15,226,140)
LOCAL FUNDS			
Total	(\$2,247,259)	(\$6,046,775)	(\$15,226,140)

*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.

The amounts reflected above are the estimated reductions in the federal share of program expenditures in the Medicaid program for ABA-based therapy services. In FY 16-17, \$432 is included for the federal 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 continues the provisions of the January 1, 2017 Emergency Rule which amended the reimbursement methodology governing Applied Behavior Analysis-Based therapy services in order to realign the reimbursement rates to be consistent with the commercial rates for these services which will be in effect statewide in January 2017. The realignment is expected to reduce Medicaid payments for ABA-Based therapy services.

- 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 reduce program expenditures in the Medicaid program for ABA-based therapy services by approximately \$3,609,821 for FY 16-17, \$9,546,535 for FY 17-18 and \$24,038,744 for FY 18-19.

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.

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, the change in reimbursement methodology may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.