

NOTICE OF INTENT

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

**Professional Services Program
Tobacco Cessation Counseling
(LAC 50:IX.Chapter 11 and 15106)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.Chapter 11 and §15106 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 currently provides coverage for tobacco cessation counseling services rendered to pregnant beneficiaries in the Medical Assistance Program. The department now proposes to adopt provisions in the Professional Services Program in order to expand coverage for tobacco cessation counseling services to all Medicaid beneficiaries.

**Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 1. General Provisions**

Chapter 11. Tobacco Cessation Counseling Services

§1101. General Provisions

A. Effective for dates of service on or after June 20, 2023, the Medicaid Program provides coverage for tobacco

cessation counseling services to beneficiaries who use tobacco products or who are being treated for tobacco use.

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, Bureau of Health Services Financing, LR 49:

§1103. Scope of Services

A. Tobacco cessation counseling services shall be reimbursed by the Medicaid Program when rendered by the beneficiary's primary care provider (PCP) or other appropriate healthcare professionals. Beneficiaries may receive up to four tobacco cessation counseling sessions per quit attempt, up to two quit attempts per calendar year, for a maximum of eight counseling sessions per calendar year. These limits may be exceeded, if deemed medically necessary.

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, Bureau of Health Services Financing, LR 49:

§1105. Provider Participation

A. The entity seeking reimbursement for tobacco cessation counseling services must be an enrolled Medicaid provider.

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, Bureau of Health Services Financing, LR 49:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15106. Tobacco Cessation Counseling Services

A. Effective for dates of service on or after June 20, 2023, the Medicaid Program shall provide reimbursement for tobacco cessation counseling services rendered by qualified health care professionals.

B. Reimbursement for tobacco cessation counseling services shall be a flat fee based on the appropriate HCPCS code.

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, Bureau of Health Services Financing, LR 49:

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 by Medicaid beneficiaries to tobacco cessation treatment 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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it will increase access to tobacco cessation treatment that may lead to decreased tobacco utilization and thus decreased spending on tobacco products by family members.

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 since it provides reimbursement for services that were not previously covered.

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 Rule has been considered. It is anticipated that this Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule provides reimbursement for services that were not previously covered.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 1, 2023.

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 April 10, 2023. If the criteria set

forth in R.S. 49:961(B)(1) are satisfied are satisfied, LDH will conduct a public hearing at 9:30 a.m. on April 27, 2023 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 April 10, 2023. 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.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Veronica Dent Dept.: Health

Phone: 342-3238 Office: Bureau of Health Services Financing

Return
Address: P.O. Box 91030 Rule
Title: Professional Services Program

Baton Rouge, LA Tobacco Cessation Counseling

Date Rule
Takes Effect: June 20, 2023

SUMMARY
(Use complete sentences)

In accordance with Section 961 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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND 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 implementation of this proposed rule will increase state costs of approximately \$42,869 for FY 22-23, \$220,275 for FY 23-24, and \$272,405 for FY 24-25. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 22-23 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 implementation of this proposed rule will increase revenue collections of statutory dedicated revenue from the Medical Assistance Trust Fund by approximately \$41,723 for FY 23-24 and \$73,433 for FY 24-25. In addition, this proposed rule will increase federal revenue collections by approximately \$202,942 for FY 22-23, \$1,155,046 for FY 23-24, and \$1,524,660 for FY 24-25. It is anticipated that \$324 will be collected in FY 22-23 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 NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule adopts provisions in the Professional Services Program in order to expand coverage for tobacco cessation counseling services to all Medicaid beneficiaries. Currently, coverage for these services is limited to pregnant women. This proposed rule will ensure that all Medicaid beneficiaries have access to tobacco cessation counseling which may lead to decreased tobacco utilization and spending on tobacco products. Implementation of this proposed rule is anticipated to increase payments to providers by approximately \$245,163 for FY 22-23, \$1,417,044 for FY 23-24, and \$1,870,498 for FY 24-25, since tobacco cessation counseling will now be covered for all beneficiaries.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

03/06/2023
Date of Signature

Evan Porrasseaux, Interim Deputy
Legislative Fiscal Officer or Designee Fiscal Officer

3/7/23
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 deliberation 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 adopts provisions in the Professional Services Program in order to expand coverage for tobacco cessation counseling services to all Medicaid beneficiaries. Currently, coverage for these services is limited to pregnant women.

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

The Department of Health, Bureau of Health Services Financing currently provides coverage for tobacco cessation counseling services rendered to pregnant beneficiaries in the Medical Assistance Program. The department now proposes to adopt provisions in the Professional Services Program in order to expand coverage for tobacco cessation counseling services to all Medicaid beneficiaries.

- 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.

Yes. It is anticipated that implementation of this proposed rule will result in increased programmatic costs to the Medicaid program of approximately \$245,811 for FY 22-23, \$1,417,044 for FY 23-24, and \$1,870,498 for FY 24-25. In FY 22-23, \$648 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) _____ Yes. If yes, attach documentation.

(b) X NO. If no, provide justification as to why this rule change should be published at this time

Act 199 of the 2022 Regular Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. Implementation of this proposed rule will ensure that all Medicaid beneficiaries have access to tobacco cessation counseling services. Providers will benefit from reimbursement received for rendering these services to expanded population.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

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

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

COSTS	FY 23	FY 24	FY 25
Personal Services	\$648		
Operating Expenses			
Professional Services			
Other Charges	\$245,163	\$1,417,044	\$1,870,498
Equipment			
Major Repairs & Constr.			
TOTAL	\$245,811	\$1,417,044	\$1,870,498

POSITIONS (#)

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 22-23, \$648 will be spent for the state's administrative expense for promulgation of this proposed rule and final rule.

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

SOURCE	FY 23	FY 24	FY 25
State General Fund	\$42,869	\$220,275	\$272,405
Agency Self-Generated			
Dedicated	\$0	\$41,723	\$73,433
Federal Funds	\$202,942	\$1,155,046	\$1,524,660
Other (Specify)			
TOTAL	\$245,811	\$1,417,044	\$1,870,498

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 THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments 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.

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

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

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

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

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

<u>REVENUE INCREASE/DECREASE</u>	<u>FY 23</u>	<u>FY 24</u>	<u>FY 25</u>
State General Fund			
Agency Self-Generated			
Dedicated Funds*	\$0	\$41,723	\$73,433
Federal Funds	\$202,942	\$1,155,046	\$1,524,660
Local Funds			
TOTAL	\$202,942	\$1,196,769	\$1,598,093

*Specify the particular fund being impacted.

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

The amounts reflected above are the estimated increases in statutory dedicated funds from the Medical Assistance Trust Fund and in federal revenue collections. In FY 22-23, \$324 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

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

This proposed rule adopts provisions in the Professional Services Program in order to expand coverage for tobacco cessation counseling services to all Medicaid beneficiaries. Currently, coverage for these services is limited to pregnant women. This proposed rule will ensure that all Medicaid beneficiaries have access to tobacco cessation counseling which may lead to decreased tobacco utilization and spending on tobacco products.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Implementation of this proposed rule is anticipated to increase payments to providers by approximately \$245,163 for FY 22-23, \$1,417,044 for FY 23-24, and \$1,870,498 for FY 24-25, since tobacco cessation counseling will now be covered for all beneficiaries.

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.