

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.14101,14301,14303, and 14501)**

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.14101, §14301, §14303, and §14501 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) approved a request by the Department of Health to implement the Healthy Louisiana Opioid Use Disorder/Substance Use Disorder Waiver, a five-year 1115(a) demonstration waiver to permit managed care organizations (MCOs) to provide opioid use disorder/substance use disorder services to Medicaid recipients in an institution for mental disease (IMD) without regard to the monthly MCO length of stay limit for these residential treatment services in an IMD setting. The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose

to amend the provisions governing substance use disorders services in order to align these provisions with the CMS-approved Healthy Louisiana Opioid Use Disorder/Substance Use Disorder Waiver.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 15. Substance Use Disorders Services

Chapter 141. General Provisions

§14101. Introduction

A. ...

B. The SUD services rendered shall be those services which are medically necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible level of functioning in the community.

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 44:1890 (October 2018), LR 45:

Chapter 143. Services

§14301. General Provisions

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

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. Children who are in need of SUD services should be served within the context of the family and not as an isolated unit. Services provided to children and youth shall include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody provided that written consent is obtained from minor. Coordination with other child-serving systems should occur as needed to achieve the treatment goals subject to the minor's consent and applicable privacy laws. All coordination and consent must be documented in the child's medical record.

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.

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

D.1. - E. 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, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1890 (October 2018), LR 45:

§14303. Covered Services

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

1. assessment;
2. outpatient treatment;
3. residential treatment; and
4. inpatient treatment.

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

1. - 2. ...
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving services; and
4. room and board for any rates provided in a residential setting.
5. 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, Bureau of Health Services Financing and

the Office of Behavioral Health, LR 44:1891 (October 2018), LR 45:

Chapter 145. Provider Participation

§14501. Provider Responsibilities

A. - D. ...

E. Providers shall maintain case records that include, at a minimum:

1. the name of the individual;
2. the dates and time of service;
3. assessments;
4. a copy of the treatment plans, which include at a

minimum:

- a. goals and objectives, which are specific, measureable, action oriented, realistic and time-limited;
 - b. specific interventions;
 - c. the service locations for each intervention;
 - d. the staff providing the intervention; and
 - e. the dates of service;
5. progress notes that include the content of each delivered service, including the reason for the contact describing the goals/objectives addressed during the service, specific intervention(s), progress made toward functional and clinical improvement;
 6. units of services provided;

7. crisis plan;
8. discharge plan; and
9. advanced directive.

F. Residential treatment facilities shall meet the following additional requirements:

1. Be a licensed organization, pursuant to the residential service provider qualifications described in the *Louisiana Administrative Code* and the Louisiana Medicaid provider manual.

2. 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.

3. Provide full disclosure of ownership and control, including but not limited to any relative contractual agreements, partnerships, etc.

4. Follow all residential treatment provider qualifications and program standards in licensure, Medicaid provider manual, managed care contracts or credentialing.

5. Must deliver care consistent with the specifications in the ASAM Criteria or other OBH approved, nationally recognized SUD program standards, hours of clinical

care, and credentials of staff for residential treatment settings.

6. Effective April 1, 2019, must offer medication-assisted treatment (MAT) on-site or facilitate access to MAT off-site, and appropriately document MAT options, education and facilitation efforts in accordance with requirements outlined in the Medicaid provider manual.

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 44:1891 (October 2018), LR 45:

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 a positive on family functioning, stability and autonomy as described in R.S. 49:972 because it will allow recipients in institutions for mental disease with an opioid use disorder/substance use disorder diagnosis to access critical treatment services.

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 because it will allow recipients in institutions for mental disease with an opioid use disorder/substance use disorder diagnosis to access critical OUD/SUD treatment services.

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 27, 2018 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
Statement: Veronica Dent
Phone: 342-3238
Dept.: Health
Office: Bureau of Health Services
Financing

Return P.O. Box 91030
Address: Baton Rouge, LA
Rule Title: Behavioral Health Services
Substance Use Disorders
Services

Date Rule Takes Effect: February 20, 2019

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 implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 18-19. It is anticipated that \$1,080 (\$540 SGF and \$540 FED) will be expended in FY 18-19 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 not affect revenue collections other than the federal share of the promulgation costs for FY 18-19. It is anticipated that \$540 will be collected in FY 18-19 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 services in order to align these provisions with the Healthy Louisiana Opioid Use Disorder/Substance Use Disorder Waiver, a five-year 1115(a) demonstration waiver approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to permit managed care organizations (MCOs) to provide opioid use disorder/substance use disorder (OUD/SUD) services to Medicaid recipients in an institution for mental disease (IMD) without regard to the monthly MCO length of stay limit for these residential treatment services in an IMD setting. Recipients in IMDs with OUD/SUD diagnoses will benefit from the implementation of this proposed Rule, since it ensures continued access to critical OUD/SUD treatment services that were already being provided prior to the waiver, without interruption in care. There is no anticipated impact as a result of this proposed rule which ensures alignment of the SUD provisions in the Louisiana Administrative Code with the CMS-approved 1115(a) waiver that continues ongoing expenditures previously being reimbursed as a cost effective alternative benefit (or "in lieu of") arrangement with the MCOs, does not add or expand service coverage, and allows the state to continue to draw down the same federal match for these services. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to substance use disorders services providers for FY 18-19, FY 19-20 and FY 20-21.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

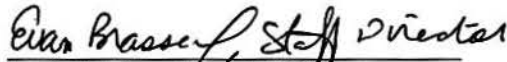


Signature of Agency Head
or Designee

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



LDH/BHSF Budget Head



Legislative Fiscal Officer
or Designee

11/9/18

Date of Signature

11/09/18

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 services in order to align these provisions with the Healthy Louisiana Opioid Use Disorder/Substance Use Disorder Waiver, a five-year 1115(a) demonstration waiver approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to permit managed care organizations (MCOs) to provide opioid use disorder/substance use disorder services to Medicaid recipients in an institution for mental disease (IMD) without regard to the monthly MCO length of stay limit for these residential treatment services in an IMD setting.

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

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved a request by Department of Health to implement the Healthy Louisiana Opioid Use Disorder/Substance Use Disorder (OUD/SUD) Waiver, a five-year 1115(a) demonstration waiver to permit managed care organizations (MCOs) to provide OUD/SUD treatment to Medicaid recipients in an institution for mental disease (IMD) without regard to the monthly MCO length of stay limit for these residential treatment services in an IMD setting. The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions governing substance use disorders services in order to align these provisions with the CMS-approved Healthy Louisiana Opioid Use Disorder/Substance Use Disorder Waiver.

- 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 18-19. It is anticipated that \$1,080 will be expended in FY 18-19 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 18-19	FY 19-20	FY 20-21
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,080	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$1,080	\$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 18-19, \$1,080 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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND	\$540	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$540	\$0	\$0
OTHER (Specify)			
Total	\$1,080	\$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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$540	\$0	\$0
LOCAL FUNDS			
Total	\$540	\$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 18-19, \$540 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 services in order to align these provisions with the Healthy Louisiana Opioid Use Disorder/Substance Use Disorder Waiver, a five-year 1115(a) demonstration waiver approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to permit managed care organizations (MCOs) to provide opioid use disorder/substance use disorder (OUD/SUD) services to Medicaid recipients in an institution for mental disease (IMD) without regard to the monthly MCO length of stay limit for these residential treatment services in an IMD setting.

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

Recipients in IMDs with OUD/SUD diagnoses will benefit from the implementation of this proposed Rule, since it ensures continued access to critical OUD/SUD treatment services that were already being provided prior to the waiver, without interruption in care. There is no anticipated impact as a result of this proposed rule which ensures alignment of the SUD provisions in the Louisiana Administrative Code with the CMS-approved 1115(a) waiver that continues ongoing expenditures previously being reimbursed as a cost effective alternative benefit (or "in lieu of") arrangement with the MCOs, does

not add or expand service coverage, and allows the state to continue to draw down the same federal match for these services. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to substance use disorders services providers for FY 18-19, FY 19-20 and FY 20-21.

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.