

NOTICE OF INTENT

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

**Behavioral Health Services
Treatment for Opioid Use Disorder in Opioid Treatment Programs
(LAC 50:XXXIII.Chapters 151-157)**

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to adopt LAC 50:XXXIII.Chapters 151-157 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.

Section 1006(b) of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act amended Section 1902(a)(10)(A) of the Social Security Act to add medication-assisted treatment as a mandatory Medicaid benefit, defined as all drugs approved by the Food and Drug Administration (FDA), including methadone.

The Department of Health, Bureau of Health Service Financing and the Office of Behavioral Health propose to adopt provisions governing medication-assisted opioid use disorder (OUD) treatment in Opioid Treatment Programs, for Medicaid-eligible recipients ages 18 and over, diagnosed with OUD.

TITLE 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 16. Coverage for Treatment for Opioid Use Disorder in Opioid Treatment Programs

Chapter 151. General Provisions

§15101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage for medication-assisted treatment provided in Opioid Treatment Programs, including but not limited to, methadone treatment, to all Medicaid-eligible adults and children with opioid use disorder (OUD).

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 and the Office of Behavioral Health, LR 46:

§15103. Recipient Qualifications

A. Adults and children who meet Medicaid eligibility and clinical criteria shall qualify to receive medically necessary OUD services in Opioid Treatment Programs.

B. Qualifying recipients must meet the following criteria:

1. are at least 18 years old, unless the recipient has consent from a parent or legal guardian, if applicable; and

2. meet the federal requirements regarding admission to the Opioid Treatment Program.

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 and the Office of Behavioral Health, LR 46:

Chapter 153. Services

§15301. General Provisions

A. All treatment services must be 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 and the Office of Behavioral Health, LR 46:

§15303. Covered Services

A. The following services provided by Opioid Treatment Programs shall be reimbursed under the Medicaid Program:

1. the administration and dispensing of medications;
and

2. treatment phases outlined in LAC 48:I.5725.

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 and the Office of Behavioral Health, LR 46:

Chapter 155. Provider Participation

§15501. Provider Responsibilities

A. Each Opioid Treatment Program shall enter into a contract with the managed care organizations (MCOs) and the coordinated system of care (CSoc) contractor in order to receive reimbursement for Medicaid covered services.

B. Opioid treatment programs shall deliver all services in accordance with federal and state laws and regulations, and the provisions of this Rule.

C. Opioid Treatment Programs must be licensed in accordance with state laws and regulations, in addition to operating within their scope of practice license.

D. Opioid Treatment Programs shall retain all records necessary to fully disclose the extent of services provided to recipients for five years from the date of service and furnish such records, and any payments claimed for services, to the Medicaid program upon request.

E. Opioid Treatment Programs shall maintain compliance with state and federal regulatory authorities for operation, including but not limited to the Substance Abuse and Mental Health Services Administration (SAMHSA), the Drug Enforcement Administration (DEA), and the State Opioid Treatment Authority.

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 and the Office of Behavioral Health, LR 46:

Chapter 157. Reimbursement

§15701. Reimbursement Methodology

A. Reimbursement rates for Opioid Treatment Programs shall be a bundled rate included in the Specialized Behavioral Health Fee Schedule as determined by the department.

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 and the Office of Behavioral Health, LR 46:

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 increases access to medication-assisted opioid use disorder treatment services for eligible recipients in need of these 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. 49:973-972 as it provides Medicaid reimbursement for medication-assisted opioid use disorder treatment services that were previously cash-based only for recipients in need of these services.

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, 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 it provides Medicaid reimbursement for the provision of medication-assisted opioid use disorder treatment services to eligible recipients.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2019.

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 November 12, 2019. 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 November 27, 2019 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 November 12, 2019. 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

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
Treatment for Opioid Use Disorder
in Opioid Treatment Programs

Date Rule Takes Effect: January 20, 2020

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 programmatic costs of approximately \$1,442,423 for FY 19-20, \$3,669,734 for FY 20-21 and \$3,847,724 for FY 21-22. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 19-20 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 66.40 percent in FY 19-20, FY 20-21, and FY 21-22 for the projected non-expansion population, and a blended FMAP rate of 91.50 percent in FY 19-20 and 90.00 percent in FY 20-21 and FY 21-22 for the projected expansion population.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$5,859,016 for FY 19-20, \$14,265,866 for FY 20-21 and \$14,836,501 for FY 21-22. It is anticipated that \$432 will be collected in FY 19-20 for the federal share of the 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 66.40 percent in FY 19-20, FY 20-21, and FY 21-22 for the projected non-expansion population, and a blended FMAP rate of 91.50 percent in FY 19-20 and 90.00 percent in FY 20-21 and FY 21-22 for the projected expansion population.

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

This proposed rule adopts provisions governing opioid use disorder (OUD) treatment in Opioid Treatment Programs, for recipients ages 18 and over, diagnosed with an OUD, in compliance with Section 1006(b) of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, which amended Section 1902(a)(10)(A) of the Social Security Act to add medication-assisted treatment, including methadone treatment, as a mandatory Medicaid benefit. Implementation of this proposed Rule will be beneficial as it ensures that eligible recipients will have access to necessary medication-assisted OUD treatment and providers will receive Medicaid reimbursement for the provision of these services. It is anticipated that implementation of this proposed rule will result in programmatic costs to the Medicaid program of \$7,300,575 in FY 19-20, \$17,965,600 in FY 20-21 and \$18,684,224 in FY 21-22.

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



Legislative Fiscal Officer
or Designee

10/10/19

Date of Signature



LDH/BHSF Budget Head

10/10/19

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 adopts provisions governing opioid use disorder (OUD) treatment in Opioid Treatment Programs, for recipients ages 18 and over, diagnosed with an OUD to comply with Section 1006(b) of the SUPPORT Act which amended Section 1902(a)(10)(A) of the Social Security Act to add medication-assisted treatment, including methadone treatment, as a mandatory Medicaid benefit.

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

Section 1006(b) of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act amended Section 1902(a)(10)(A) of the Social Security Act to add medication-assisted treatment as a mandatory Medicaid benefit, defined as all drugs approved by the Food and Drug Administration (FDA), including methadone.

The Department of Health, Bureau of Health Service Financing and the Office of Behavioral Health propose to adopt provisions governing medication-assisted opioid use disorder (OUD) treatment in Opioid Treatment Programs, for Medicaid-eligible recipients ages 18 and over, diagnosed with an OUD.

- 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 programmatic costs to the Medicaid program of \$7,301,439 in FY 19-20, \$17,965,600 in FY 20-21 and \$18,684,224 in FY 21-22. In FY 19-20, \$864 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) X If no, provide justification as to why this rule change should be published at this time.

Act 10 of the 2019 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. This proposed rule complies with federal requirements to add medication-assisted treatment, including methadone treatment, as a mandatory Medicaid benefit for eligible recipients diagnosed with opioid use disorder.

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 19-20	FY 20-21	FY 21-22
PERSONAL SERVICES			
OPERATING EXPENSES	\$864	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$7,300,575	\$17,965,600	\$18,684,224
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$7,301,439	\$17,965,600	\$18,684,224

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 increases in programmatic expenditures in the Medicaid program. In FY 19-20, \$864 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 19-20	FY 20-21	FY 21-22
STATE GENERAL FUND	\$1,442,423	\$3,699,734	\$3,847,724
SELF-GENERATED			
FEDERAL FUND	\$5,859,016	\$14,265,866	\$14,836,501
OTHER (Specify)			
Total	\$7,301,439	\$17,965,600	\$18,684,224

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 19-20	FY 20-21	FY 21-22
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$5,859,016	\$14,265,866	\$14,836,501
LOCAL FUNDS			
Total	\$5,859,016	\$14,265,866	\$14,836,501

***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 increases in the federal share of programmatic expenditures for the Medicaid Program. In FY 19-20, \$864 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 adopts provisions governing opioid use disorder (OUD) treatment in Opioid Treatment Programs, for recipients ages 18 and over, diagnosed with an OUD, in compliance with Section 1006(b) of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, which amended Section 1902(a)(10)(A) of the Social Security Act to add medication-assisted treatment, including methadone, as a mandatory Medicaid benefit.

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

Implementation of this proposed Rule will be beneficial as it ensures that eligible recipients will have access to necessary medication-assisted OUD treatment and providers will receive Medicaid reimbursement for the provision of these services. It is anticipated that implementation of this proposed rule will result in programmatic costs to the Medicaid program of \$7,300,575 in FY 19-20, \$17,965,600 in FY 20-21 and \$18,684,224 in FY 21-22.

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.