

NOTICE OF INTENT

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

**Behavioral Health Services
Services for Targeted Populations
(LAC 50:XXXIII.Subpart 8)**

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to adopt LAC 50:XXXIII.Subpart 8 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 the U.S. Department of Justice signed an agreement on June 6, 2018 requiring the department to ensure that personal care services (PCS) and individual placement and support (IPS) supported employment services are incorporated into behavioral health services for individuals at least 21 years of age with mental health disorders who have transitioned from a nursing facility or have been diverted from nursing facility level of care. In compliance with this agreement, the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health now propose to adopt provisions to provide coverage for PCS and IPS supported employment services rendered to the target population.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXXIII. Behavioral Health Services
Subpart 8. Services for Targeted Populations

Chapter 71. General Provisions

§7101. Introduction

A. The Medicaid program hereby adopts provisions to provide coverage under the 1915(b)(3) waiver for services rendered to the targeted population of adults with mental health disorders who have transitioned from a nursing facility or been diverted from nursing facility level of care. These services shall be administered under the authority of the Department of Health, in collaboration with the managed care organizations (MCOs), which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. Personal care services (PCS) rendered to adults shall be necessary to assist and provide supervision with activities of daily living or to restore the individual to his/her best possible functioning level in the community.

C. Individual placement and support (IPS) services rendered to adults shall be necessary to reduce the disability resulting from mental illness and to restore the individual to his/her best possible functioning level 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, Bureau of Health Services Financing and the Office of Behavioral Health, LR 47:

§7103. Recipient Qualifications

A. The targeted population for the 1915(b)(3) services shall be Medicaid recipients who:

1. are at least 21 years of age;
2. have a qualifying mental health diagnosis;
3. meet medical necessity in accordance with LAC

50:I.1101; and

4. have transitioned from a nursing facility or been diverted from nursing facility level of care.

B. Recipients of personal care services (PCS) must meet the following additional recipient eligibility criteria:

1. recipients must be medically stable;
2. recipients shall not be enrolled in a Medicaid-

funded program which offers a personal care service or related benefit; and

3. recipients' care needs do not exceed that which can be provided under the scope and/or service limitations of PCS.

C. An adult with a diagnosis of a substance use disorder or intellectual and developmental disability without an additional co-occurring qualifying mental health diagnosis shall not meet the criteria for mental health services.

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 47:

Chapter 73. Services

§7301. General Provisions

A. All 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 practitioner or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services must be prior authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. There shall be recipient involvement throughout the planning and delivery of services.

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 be appropriate for:

- a. age;
- b. development; and
- c. education.

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

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

F. Services must be delivered in home and community-based settings.

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 47:

§7303. Covered Services

A. The following services for the targeted populations shall be reimbursed under the Medicaid Program:

1. personal care services (PCS); and
2. individual placement and support (IPS) services.

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

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual; and

2. services provided at a work site which are not directly related to the treatment of the recipient's needs.

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 47:

Chapter 75. Provider Participation

§7501. Provider Responsibilities

A. Each provider of services for the target populations shall enter into a contract with one or more of the managed care organizations (MCOs) in order to receive reimbursement for Medicaid covered services.

B. Providers shall deliver all services in accordance with their license and scope of practice, federal and state laws and regulations, the provisions of this Rule, and other 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, Bureau of Health Services Financing and the Office of Behavioral Health, LR 47:

Chapter 77. Reimbursement

§7701. Reimbursement Methodology

A. The department, or its fiscal intermediary, shall make monthly capitation payments to the MCOs. The capitation rates paid to the MCOs shall be actuarially sound rates and the MCOs will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid rate.

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 47:

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 provides additional behavioral health services to the targeted population of recipients.

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 provides Medicaid reimbursement for services that were previously not covered for this population and may facilitate their ability to obtain and maintain competitive employment.

Small Business Statement

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 a positive impact on small businesses, as described in R.S. 49:965.2 et seq. since it

provides Medicaid reimbursement for behavioral health services that were previously not covered for this population.

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 increase 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 increases payments to providers.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2021.

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 October 12, 2021. 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 October 28, 2021 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 October 12, 2021. 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: <u>Veronica Dent</u>	Dept.: <u>Health</u>
Phone: <u>342-3238</u>	Office: <u>Bureau of Health Services Financing</u>
Return Address: <u>PO Box 91030</u>	Rule Title: <u>Behavioral Health Services</u>
<u>Baton Rouge, LA</u>	<u>Services for Targeted Populations</u>
	Date Rule Takes Effect: <u>December 20, 2021</u>

SUMMARY
(Use complete sentences)

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 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 result in increased state costs of approximately \$641,909 for FY 21-22, \$1,264,119 for FY 22-23 and \$1,264,119 for FY 23-24. It is anticipated that \$1,080 (\$540 SGF and \$540 FED) will be expended in FY 21-22 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 increase federal revenue collections by approximately \$1,340,548 for FY 21-22, \$2,698,637 for FY 22-23, and \$2,698,637 for FY 23-24. It is anticipated that \$540 will be collected in FY 21-22 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)

In compliance with the June 6, 2018 agreement between the Department of Health and the U.S. Department of Justice, this proposed rule adopts provisions to include personal care services (PCS) and individual placement and support (IPS) supported employment services in the behavioral health services covered for individuals at least 21 years of age with mental health disorders who have transitioned from a nursing facility or have been diverted from nursing facility level of care. This proposed rule will be beneficial to qualified recipients by providing access to PCS and IPS services. Providers will benefit from implementation of this proposed rule since they will receive reimbursement for the provision of services that were previously not covered for this population. It is estimated that implementation of this proposed rule will increase expenditures for Medicaid services by \$1,981,377 for FY 21-22, \$3,962,755 for FY 22-23, and \$3,962,755 for FY 23-24.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head or Designee



Legislative Fiscal Officer or Designee

Patrick Gillies, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

9/9/2021

Date of Signature

9/9/21

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).

In compliance with the June 6, 2018 agreement between the Department of Health and the U.S. Department of Justice, this proposed rule adopts provisions to include personal care services (PCS) and individual placement and support (IPS) supported employment services in the behavioral health services covered for individuals at least 21 years of age with mental health disorders who have transitioned from a nursing facility or have been diverted from nursing facility level of care.

- 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 and the U.S. Department of Justice signed an agreement on June 6, 2018 requiring the department to ensure that personal care services (PCS) and individual placement support (IPS) supported employment services are incorporated into behavioral health services for individuals at least 21 years of age with mental health disorders who have transitioned from a nursing facility or have been diverted from nursing facility level of care. In compliance with this agreement, the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health now propose to adopt provisions to provide coverage for PCS and IPS supported employment services rendered to the target population.

- 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 estimated that implementation of this proposed rule will result in programmatic costs to the Medicaid program of \$1,982,457 for FY 21-22, \$3,962,755 for FY 22-23, and \$3,962,755 for FY 23-24. In FY 21-22, \$1,080 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 119 of the 2021 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 be beneficial to qualified recipients by providing access to PCS and IPS supported employment services.

**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 22	FY 23	FY 24
Personal Services			
Operating Expenses	\$1,080	\$0	\$0
Professional Services			
Other Charges	\$1,981,377	\$3,962,755	\$3,962,755
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,982,457	\$3,962,755	\$3,962,755
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.

The expenses reflected above are the estimated increases in programmatic expenditures in the Medicaid program. In FY 21-22, \$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 22	FY 23	FY 24
State General Fund	\$641,909	\$1,264,119	\$1,264,119
Agency Self-Generated Dedicated			
Federal Funds	\$1,340,548	\$2,698,637	\$2,698,637
Other (Specify)			
TOTAL	\$1,982,457	\$3,962,755	\$3,962,755

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 governmental 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?

REVENUE INCREASE/DECREASE	FY 22	FY 23	FY 24
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$1,340,548	\$2,698,637	\$2,698,637
Local Funds			
TOTAL	\$1,340,548	\$2,698,637	\$2,698,637

*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 the federal share of programmatic expenditures for the Medicaid program. In FY 21-22, \$540 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.

In compliance with the June 6, 2018 agreement between the Department of Health and the U.S. Department of Justice, this proposed rule adopts provisions to include personal care services (PCS) and individual placement and support (IPS) supported employment services in the behavioral health services covered for individuals at least 21 years of age with mental health disorders who have transitioned from a nursing facility or have been diverted from nursing facility level of care. This proposed rule will be beneficial to qualified recipients by providing access to PCS and IPS services.

- 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.

Providers will benefit from implementation of this proposed rule since they will receive reimbursement for the provision of services that were previously not covered for this population. It is estimated that implementation of this proposed rule will increase expenditures for Medicaid services by \$1,981,377 for FY 21-22, \$3,962,755 for FY 22-23, and \$3,962,755 for FY 23-24.

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 know effect on competition and employment.