

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